18659

(17,660.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 546.

GEORGE DEWEY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 16, 1900.

1 In the Court of Claims, Term 1889–'9.

GEORGE DEWEY
v.
THE UNITED STATES. } No. 51. Naval Bounty.

I.—*Amended Petition.*

Allowed by the court to be filed *nunc pro tunc* in lieu of original petition (filed July 13, 1899.—J. R.).

To the honorable the Court of Claims:

The claimant, George Dewey, respectfully represents:

1. That he was on the first day of May, 1898, a commodore in the United States Navy, serving on the flagship *Olympia*, a vessel of the United States Navy, in Manila bay, Philippine islands; that on said day an engagement took place between the following vessels of the United States Navy: *Olympia, Baltimore, Boston, Raleigh, Concord, Petrel, McCulloch, Nanshan and Zafiro*, and vessels of war, belonging to the King of Spain, supported by powerful shore batteries and torpedoes, the United States and the Kingdom of Spain being then at war, whereby the following Spanish vessels of war were sunk or otherwise destroyed: *Reina Cristina, Castilla, Don Antonio de Ulloa, General Lezo, Marques del Duero, Argos, Velasco, and Isla de Mindanao.*

2. That the claimant cannot now state exactly the number of men on board the enemy's vessels at the commencement of said engagement; that the number was in excess of the number on board the vessels of the United States; that the enemy's vessels engaged in said action, supported as aforesaid, were of superior force to the vessels of the United States.

3. That § 4635 of the Revised Statutes provides as follows:

"A bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement, which is sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars, if the enemy's vessel was of inferior force, and of two hundred dollars, if of equal or superior force, to be divided among the officers and crew in the same manner as prize money."

4. That in said engagement the following vessels of the enemy were also sunk, but not destroyed, to wit: *Don Juan de Austria, Isla de Cuba*, and *Isla de Luzon;* that said vessels have since been raised by the United States and taken for the use of the United States and are to be employed by the United States as a portion of its navy in Pacific waters; that proceedings are to be begun in the supreme court of the District of Columbia to condemn these vessels as prize

of war, but no determination has been had thereon; that the claimant now makes no claim for bounty under § 4635 of the Revised Statutes on account of said vessels, as he maintains that they are by law subject to condemnation in prize, but will make such claim hereafter if it be held that they are not subject to such condemnation.

5. That the Secretary of the Navy, by a letter dated January 20, 1899, has referred all claims arising under § 4635 aforesaid to this court for adjudication under § 2 of the act of March 3, 1883 (22 Stat. L., 485), as amended by § 13 of the act of March 3, 1887 (24 Stat. L., 507); that no action has been had on this claim in
2&3 Congress or by any of the departments.

6. That the claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made; that the claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; that the claimant is a citizen of the United States and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true.

7. That by reason of the facts aforesaid a claim against the United States has accrued to the claimant for the sum of ($19,140) nineteen thousand one hundred and forty dollars, for which judgment is prayed.

HERBERT & MICOU,
Attorneys for Claimant.

WASHINGTON, *District of Columbia,* } *ss:*

Benj. Micou, being duly sworn, deposes and says: I am one of the attorneys for the claimant in this case and have a power of attorney to represent him. I have read the above petition, and the matters therein stated are true, to the best of my information and belief.

BENJ. MICOU.

Subscribed and sworn to before me this 28th day of February, 1900.

CHARLES R. HARBAN,
Notary Public.

4 III.—*Letters of Reference of the Navy Department.*

NAVY DEPARTMENT,
WASHINGTON, *January* 20, 1899.

SIR: This department has before it certain claims for bounty filed under the provisions of section 4635 of the Revised Statutes

or sinking or otherwise destroying vessels belonging to Spain on various dates during the period from April 21, when active naval operations against that country were entered upon, until the suspension of hostilities upon the signing of the protocol of August 12, 1898. As these claims involve controverted questions of fact and law, the decision of which will affect a class of cases and will furnish a precedent for the future action of this department in the adjustment of a class of cases, it is, after correspondence with the Attorney General and with his approval, deemed advisable that they be referred to the Court of Claims in order that the matters involved may receive judicial consideration. A number of such claims (particularly described upon the accompanying list of inclosures) are, accordingly, herewith transmitted.

This reference is made under the provisions of section 2 of the "Act to afford assistance and relief to Congress and the executive departments in the investigation of claims and demands against the Government," approved March 3, 1883 (22 Stats., p. 485), as amended by section 13 of the "Act to provide for the bringing of suits against the Government of the United States," approved March 3, 1887 (24 Stats., p. 507), and its purpose is to secure, as far as permitted by existing law, an authoritative and final determination by the court of the rights of all parties interested.

Among the questions involved in the claims herewith transmitted are the following:

1. Whether the vessels for the sinking or destruction of which bounty is claimed were of inferior or of equal or superior force to the vessels of the United States engaged, and whether such vessels of the enemy were sunk or destroyed in action or "in consequence of injuries sustained in action," or immediately thereafter "for the public interest," as contemplated in the last clause of section 4635 of the Revised Statutes?

The determination of these questions will fix the rate of bounty to be paid at $200, or $100, "for each person on board" such vessel of the enemy "at the commencement of the engagement," or $50 "for every person * * * on board at the time of such capture," as the case may be.

2. What vessels of the enemy among those sunk or destroyed fall within the statutory provisions authorizing the payment of bounty?

It appears from an examination of the claims in question that the vessels sunk or destroyed were of various classes, ranging from those of the modern armored-cruiser type, on the one hand, through a considerable variety of armed steam and sailing vessels, large and small, all more or less effectively equipped and fitted out for offensive or defensive operations or for auxiliary service. They include armed transports, merchant vessels attempting to run blockade under steam or sail, coasting vessels, tugs, fishing schooners, and river and harbor craft of various kinds. Some of the vessels for which bounty is claimed were manned by a complement of officers and men of the Spanish navy; some had only one or more representatives of the navy or army on board; some were officered and

manned by persons not belonging to the regular navy or army, but enrolled as a part of the naval militia or naval reserve, and so subject to service upon call of the Spanish government; and with respect to others there is uncertainty as to the precise status of their officers and men. Some of the vessels were sunk or destroyed in battle; others at the end of a chase, after little or no resistance; and others again were seized in rivers and harbors and sunk or destroyed because they had been used or were in such condition as to be available for use in the transportation of troops or supplies, or otherwise in aid of the enemy.

3. What vessels of the United States are, in any given case, entitled to share in bounty?

The question whether the provisions of section 4635 are applicable to such vessels of the United States only as participated actively in the destruction of the enemy's vessels, or extend to those within signal distance of the vessel or vessels so participating, is doubtless involved in this branch of the subject; but, whether this be true or not, it is evident that the difficulties enumerated under the second question again arise here. Upon various occasions during the war, when vessels of the enemy were destroyed, there were present and either actively participating or within signal distance vessels of the regular Navy of the United States; "converted" vessels, of which the *Gloucester* may be mentioned as a type; chartered vessels, such as the *St. Paul;* vessels of the revenue-cutter, Coast Survey, and light-house service; dispatch-boats, transports, colliers, supply and hospital vessels, etc. While the applicability of section 4635 of the Revised Statutes to some of these vessels is entirely clear, it is not so as to others, and equitable distribution of bounty cannot be made until the rights of all claiming to share therein shall have been determined.

It may be proper to add that the attitude of the department toward these claims is not in any sense one of hostility, it being considered that the claimants belong to a meritorious class upon whom the Government had by statute directed the bestowal of bounty for the performance of patriotic service. The department does not, therefore, desire to antagonize these claims, but seeks merely, by the reference herein made, to secure the judicial ascertainment of the rights of all parties concerned in order that the nation's bounty may be promptly and equitably dispensed.

Entertaining these views it is requested that such early procedure in the matter may be had as the court may find practicable.

It is not supposed that the papers herewith transmitted cover all the points which may arise in connection with the cases to which they relate, and the indication of the court with respect to any further information desired, which the department may possess or be able to obtain, will meet with prompt attention. Should it appear to the court upon examination of any of the claims herein mentioned that in transmitting them reference should have been made to other provisions of law, or that they should be submitted to some other tribunal, this department requests to be so advised in order that appropriate action may be taken without delay.

The Attorney General has been advised of this reference, and requested to take such action in connection therewith as he may deem proper in the presentation of these claims to the court.

I have the honor to be, very respectfully,

(Signed) JOHN D. LONG, *Secretary.*

The chief clerk, Court of Claims.

List of Papers Forwarded to Court of Claims with Department's Letter, January 20, 1899.

File number.	Vessel making claim.	Subject.
4455–98	U. S. F. S. New York	Spanish fleet, Santiago, Cuba, July 3, 1898.
4517–98	U. S. S. Concord	Manila bay, May 1, 1898.
6124–98	U. S. S. Manning	Spanish fleet, Santiago, Cuba, July 3, 1898.
5078–98	U. S. T. B. Ericsson	Surrender Spanish fleet, Santiago, Cuba, July 3, 1898.
5488–98	U. S. S. Yale	Surrender, Santiago, Cuba, July 16, 1898.
5458–98	U. S. S. Massachusetts	Prize money and bounty sinking Reina Mercedes, harbor Santiago, evening July 4, 1898.
5629–98	U. S. S. McCulloch	Manila bay, May 1, 1898.
5642–98	U. S. B. S. Texas	Almirante, Oquendo, Infanta Maria Teresa, Vizcaya, Cristobal Colon, Pluton, Furor, Reina Mercedes, July 3 and 4, 1898.
5642–98	U. S. B. S. Texas	Vessels taken by terms of capitulation of Santiago and eastern province of Cuba.
5690–98	U. S. S. Hist	Bounty for sinking of Estrella, disabling gunboat Cuba Espenda and torpedo boat Delgad, sinking of sloop with soldiers, burning armed vessels, all in engagement against superior force, harbor Manzanilla, Cuba, June 30, 1898.

Filed January 24, 1899.
J. R.

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NAVY DEPARTMENT,
WASHINGTON, *April* 27, 1899.

SIR: Referring to this department's letter of the 20th of January last, transmitting certain claims for bounty under the provisions of section 4635 of the Revised Statutes, for sinking or otherwise destroying vessels belonging to Spain on various dates during the period from April 21 to August 12, 1898, I enclose herewith, for the consideration of the court, a number of additional claims of like character, particularly described upon the list hereto appended.

Very respectfully, CHAS. H. ALLEN,
Acting Secretary.

The chief clerk, Court of Claims.

List of Papers Forwarded to Court of Claims with Department's Letter of April 27, 1899.

File number.	Vessel making claim.	Subject.
6809-98	.....	Admiral George Dewey, U. S. N., reports that in his judgment, "taking into consideration the guns at Corregidor, El Fraile, and other forts at entrance of bay, and those at Manila and Cavite, which fired upon our ships continuously during the engagement of May 1, the enemy's force was unquestionably superior to our own."
6858-98	U. S. S. Baltimore.....	Capture and destruction of Spanish fleet and property in Manila bay, May 1, 1898.
7592-98	U. S. S. Raleigh.....	Destruction and capture of enemy's property by the ships of the Asiatic squadron, May 1, 1898.
4516-98	U. S. S. Boston.....	Naval operations at Manila, May 1, 1898. Corrected list.
7343-98	U. S. S. Petrel.....	Destruction of Spanish squadron and shipping in Manila bay on and after May 1, 1898.
6397-98	U. S. S. Baltimore.....	Corrected list of marine guard of Baltimore, May 1, 1898, including 20 per cent. increase of pay.
16-99	U. S. S. Baltimore.....	Individual claim of Pay Inspector Edward Bellows, as a participant in the battle of Manila bay, May 1, 1898.
1247-99	.....	Commanding officer U. S. S. Resolute submits claim that his vessel was "not only within signal distance, but also an armed vessel under the fire of the Spanish forts and fleet" in the action of July 3, 1898, off Santiago, and claims that the Resolute is entitled to share in bounty for destruction of Spanish vessels.
1665-99	U. S. S. Resolute.....	Letter of Commander J. G. Eaton, March 8, 1899, with press copy of department's reply thereto, relative to claim of Resolute to share in bounty awarded for destruction of Spanish fleet in the battle of Santiago.
7292-98	U. S. S. Wasp.....	Letter dated October 12, 1898, from Lieut. Aaron Ward, lately commander U. S. S. Wasp, transmitting original and amended copy of prize list for action at Nipe bay, July 21, 1898. Press copy of department's reply appended.
7751-98	.....	Letter of Lieutenant Ward, November 2, 1898, explaining that last-mentioned correspondence relates to claim of the Wasp for the sinking of the Spanish cruiser Don Jorge Juan.
6512-98	U. S. S. Annapolis.....	Capture and destruction of the Spanish cruiser Jorge Juan at Nipe bay, Cuba, July 21, 1898.
6266-98	U. S. S. Leyden.....	Sinking of the Spanish gunboat Jorge Juan, July 21, 1898, Nipe bay, Cuba.
901-99	U. S. S. Osceola.....	Destruction of Spanish vessels at Manzanillo, Cuba, July 18, 1898.
5883-98	U. S. S. Helena.....	Destruction of vessels of war in the harbor of Manzanillo, Cuba, July 18, 1898. Vessels destroyed: Ponton Maria, gunboats Cuba Espanola, Guantanamo, Guardian, Delgado Parejo, Estrella, and one, name unknown, similar to Cuba Espanola.

Filed April 28, 1899.
J. R.

NAVY DEPARTMENT,
WASHINGTON, *May* 25, 1899.

SIR: Referring to this department's letter of the 20th of January last, transmitting certain claims for bounty under the provisions of section 4635 of the Revised Statutes, for sinking or otherwise destroying vessels belonging to Spain on various dates during the period from April 21 to August 12, 1898, I enclose herewith, for the consideration of the court, the list of the officers and men on board the U. S. F. S. *Olympia*, May 1, 1898, the date of the destruction of the Spanish fleet and the capture of Cavite.

Very respectfully, JOHN D. LONG, *Secretary.*

The chief clerk, Court of Claims.

Filed May 26, 1899.
J. R.

7 IV.—*Findings of Fact, Conclusions of Law, and Opinion. Filed by the Court February* 26, 1900.

This case having been heard by the court, upon the evidence the facts are found as follows:

I.

On the 1st day of May, 1898, an engagement took place between the following vessels of the United States Navy: *Olympia, Baltimore, Boston, Raleigh, Concord, Petrel, McCulloch, Nanshan* and *Zafiro,* and the following vessels of war belonging to the King of Spain, supported by shore batteries, submarine mines, and torpedoes, the United States and the Kingdom of Spain being then at war: *Reina Cristina, Castilla, Don Antonio de Ulloa, General Lezo, Marques del Duero, Argos, Velasco, Isla de Mindanao, Don Juan de Austria, Isla de Cuba, Isla de Luzon* and *Manila.*

II.

The following Spanish vessels of war were then and there destroyed by the vessels of war of the United States: *Reina Cristina, Castilla, Don Juan de Ulloa, General Lezo, Marques del Duero, Argos, Velasco,* and *Isla de Mindanao,* and two torpedo boats.

III.

The following vessels, *Don Juan de Austria, Isla de Cuba,* and *Isla de Luzon,* being disabled and put out of action in the same engagement, were captured, and having since been floated and repaired by the United States, are now a part of the navy thereof. The *Manila* was captured in the same engagement.

IV.

The *Olympia* had a protective deck of from 2 to 4¾ inches in thickness, and the following armor: 8-inch barbettes, 4½ inches of nickel steel; 8-inch turrets, 6 inches of nickel, harveyized; conning tower, 5 inches of nickel steel; 5-inch sponsons, 4 inches of nickel steel; 6-pounder sponsons, 2 inches of nickel steel.

The *Baltimore* had a protective deck from 4 to 2½ inches thick; *Boston,* protective deck 1½ inches thick; *Raleigh,* protective deck 2½ to 1 inch thick.

The *Concord* and *Petrel* were without protective deck or armor.

The *McCulloch* was a revenue cutter, also entirely unprotected, and the *Nanshan* and *Zafiro,* merchant vessels used for provisions and coal, were also unprotected.

V.

The following is a statement of the guns composing the battery of each of the American vessels:

Vessel.	Number of guns.	Caliber or kind of gun.
Olympia	4	8″ B. L. R.
	10	5″ R. F.
	14	6-pdr. R. F.(cal. 2″.25).
	7	1-pdr. R. F.(cal. 1″.46).
	1	Machine gun.
	4	Torpedo tubes.
Baltimore	4	8″ B. L. R.
	6	6″ B. L. R.
	4	6-pdr. (2″.25).
	2	3-pdr. (1″.85).
	2	1-pdr. (1″.46).
	4	37 mm. (1″.46).
	1	3″.
	2	Machine guns.
Raleigh	1	6″ B. L. R.
	10	5″ R. F.
	8	6-pdr. (2″.25).
	4	1-pdr. (1″.46).
	1	3″.
	1	Machine gun.
Boston	2	8″ B. L. R.
	6	6″ B. L. R.
	2	6-pdr. (2″.25).
	2	3-pdr. (1″.85).
	2	47 mm. (1″.85).
	2	37 mm. (1″.46).
	2	1-pdr. (1″.46).
	1	Machine gun.
Concord	6	6″ B. L. R.
	2	6-pdr. (2″.25).
	2	3-pdr. (1″.85).
	1	1-pdr. (1″.46).
	2	37 mm. (1″.46).
	2	Machine guns.
Petrel	4	6″ B. L. R.
	2	3-pdr. (1″.85).
	1	1-pdr. (1″.46).
	2	37 mm. (1″.46).
	2	Machine guns.

The *Nanshan* and *Zafiro* were supplied with small guns taken from the other vessels and included in the above table. The battery of the *McCulloch* consisted of four 6-pounder R. F. guns and the two above-mentioned 3-inch guns from the *Baltimore* and *Raleigh*.

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VI.

The following is a description of the vessels of the enemy engaged in the battle:

Isla de Cuba. Isla de Luzon.

Length, 56.4 m. (185 ft.); breadth, 19.14 m. (65.29 ft.); depth of hold, 4.8 m. (15.74 ft.); extreme draught, 3.8 m. (12.46 ft.); displacement, 1,045 tons; H. P., 2,200 (*Isla de Cuba*); H. P., 2,000 (*Isla de Luzon*); 2 screws; maximum speed, 14 knots (*Isla de Cuba*), 14.14 knots (*Isla de Luzon*); coal capacity, 200 tons; radius of action at economical speed, 2,000 miles.

Armor protection.—Protective deck, 62 mm. (2.44 in.).

Armament.—4 Hontoria rifles, 12 cm. (4.72 in.); 2 Hotchkiss rapid-fire, 57 mm. (2.24 in.); 2 Hotchkiss revolving cannon, 37 mm. (1.46 in.); 1 mitrailleuse, 11 mm. (.43 in.); 1 rapid-fire, 37 mm. (1.46 in.). Torpedo tubes, 3. Complement, 156 for each ship; total for the two, 312.

Reina Cristina.

Length, 86.3 m. (283.1 ft.); breadth, 13.2 m. (43.31 ft.); depth of hold, 8.35 m. (27.39 ft.); extreme draught, 6.6 m. (21.65 ft.); displacement, 3,520 tons; H. P., 3,970; 1 screw; maximum speed, 13.98 knots; coal capacity, 668.8 tons; radius of action at economical speed, 3,376 miles.

Armament.—6 Hontoria rifles, 16 cm. (6.3 in.); 3 Nordenfeldt, 57 mm. (2.24 in.); 2 Nordenfeldt, 42 mm. (1.65 in.); 2 Hontoria rifles, 7 cm. (2.75 in.); 6 Hotchkiss revolving cannon, 37 mm. (1.46 in.); 2 mitrailleuses, 11 mm. (.43 in.).

Torpedo tubes, 5.

Complement, 352 (total).

Castilla.

Length, 72 m. (236.2 ft.); breadth, 13.56 m. (44.49 ft.); depth of hold, 8.2 m. (23.9 ft.); extreme draught, 7.5 m. (24.6 ft.); displacement, 3,260 tons; H. P., 2,600; 1 screw; maximum speed, 13 knots; coal capacity, 417 tons; radius of action at economical speed, 3,690 miles.

Armament.—4 Krupp, 13 cm. (5.12 in.); 2 Krupp, 12 cm. (4.72 in.); 2 Krupp, 12 cm. (4.72 in.); 2 Krupp, 8.7 cm. (3.43 in.); 4 Krupp, 7.5 cm. (2.95 in.); 4 Nordenfeldt, 42 mm. (1.65 in.); 4 Hotchkiss revolving cannon, 37 mm. (1.46 in.); (?) mitrailleuse.

Torpedo tubes, 2.

Complement, 349 (total).

Don Antonio de Ulloa.

Length, 64 m. (209.9 ft.); breadth, 9.75 m. (31.98 ft.); depth of hold, 5.33 m. (17.48 ft.); extreme draught, 4.45 m. (14.6 ft.); displacement, 1,160 tons; H. P., 1,523; 1 screw; maximum speed, 12.5 knots; coal capacity, 195 tons; radius of action at economical speed, 2,640 miles.

Armament.—4 Hontoria, 12 cm. (4.72 in.); 2 Hontoria, 7 cm. (2.76 in.); 2 rapid-fire, 57 mm. (2.24 in.); 4 Hotchkiss revolving cannon, 37 mm. (1.46 in.); 1 mitrailleuse, 11 mm. (.43 in.).

Torpedo tubes, 2.

Complement, 159 (total).

Don Juan de Austria.

Length, 63.83 m. (209.4 ft.); breadth, 9.73 m. (31.92 ft.); depth of hold, 5.38 m. (17.65 ft.); extreme draught, 4.6 m. (15.09 ft.); displacement, 1,159 tons; H. P., 1,500; 1 screw; maximum speed, 14.5 knots; coal capacity, 250 tons; radius of action at economical speed, 3,226 miles.

Armament.—4 Hontoria rifles, 12 cm. (4.72 in.); 2 Hontoria rifles, 7 cm. (2.76 in.); 2 Nordenfeldt, 42 mm. (1.65 in.); 4 Hotchkiss revolving cannon, 37 mm. (1.46 in.); 1 mitrailleuse, 11 mm. (.43 in.).

Torpedo tubes, 2.

Complement, 179 (total).

General Lezo.

Length, 48 m. (157.4 ft.); breadth, 7.79 m. (25.55 ft.); depth of hold, 4.19 m. (13.74 ft.); extreme draught, 3.4 m. (11.15 ft.); displacement, 520 tons; H. P., 500; 2 screws; maximum speed, 9.5

knots; coal capacity, 70 tons; radius of action at economical speed, 1,284 miles.

9 *Armament.*—2 Hontoria, 12 cm. (4.72 in.); 1 Hontoria, 9 cm. (3.54 in.); 2 Nordenfeldt mitrailleuse, 25 mm. (.98 in.); 1 mitrailleuse, 11 mm. (.43 in.).

Torpedo tubes, 1.

Total complement, 115.

Marques del Duero.

Length, 48 m. (157.4 ft.); breadth, 7.8 m. (25.59 ft.); depth of hold, 4.1 m. (13.45 ft.); extreme draught, 2.5 m. (8.20 ft.); displacement, 500 tons; H. P., 550; 2 screws; maximum speed, 10 knots; coal capacity, 90 tons; radius of action at economical speed, 1,695 miles.

Armament.—1 Pallisser, 16 cm. (6.3 in.); 2 bronze rifled, 12 cm. (4.72 in.); 1 Nordenfeldt mitrailleuse, 11 mm. (.43 in.).

Torpedo tubes, —.

Total complement, 96.

Velasco.

Length, 64.05 m. (210.06 ft.); breadth, 9.75 m. (31.98 ft.); depth of hold, 5.53 m. (18.14 ft.); extreme draught, 4.05 m. (13.28 ft.); displacement, 1,152 tons; H. P., 1,600; 1 screw; maximum speed, 14.08 knots; coal capacity, 200 tons; radius of action at economical speed, 2,800 miles.

Armament.—3 Armstrong, 15 cm. (5.91 in.); 2 Hontoria rifles, 7 cm. (2.76 in.); 2 Nordenfeldt mitrailleuse, 25 mm. (.98 in.).

Torpedo tubes, —.

Total complement, 145.

Argos (Comision Hidrografica de Filipinas, Hydrographic Commission of the Philippines).

Length, 45.06 m. (147.6 ft.); breadth, 6.75 m. (22.14 ft.); depth of hold, 5.75 m. (18.86 ft.); extreme draught, 3.5 m. (11.48 ft.); displacement, 508 tons; H. P., 65 (natural draft); 1 screw; maximum speed, 8 knots; coal capacity, 135 tons; radius of action at economical speed, 7,776 miles.

Armament.—1 Hontoria rifle, 9 cm. (3.54 in.).

Total complement, 87.

Manila (transport).

Length, 68.95 m. (226.22 ft.); breadth, 9.1 m. (29.85 ft.); depth of hold, 5.63 m. (18.47 ft.); extreme draught, 4.04 m. (13.25 ft.); displacement, 1,900 tons; H. P., 750; 1 screw; maximum speed, 9 knots; coal capacity, 204 tons; radius of action at economical speed, 1,248 miles.

Armament.—2 bronze, 42 mm. (1.65 in.).

Total complement, 77.

VII.

The enemy's vessels were also supported by land batteries, the caliber, kind, and number of the guns and their situation being shown by the following table:

BOCA GRANDE.

Class.	Location.	Number of guns.	Weight of fire.
			Pounds.
6″.3 M. L. R.	Below P'ta Restinga	3	300
6″ B. L. R.	Caballo island	3	240
4″.72 B. L. R.	El Fraile rock	1	50
4″.72 B. L. R.	El Fraile rock	2	76
Total		9	666

BOCA CHICA.

			Pounds.
8″ M. L. R.	Corregidor island	3	540
7″ M. L. R.	Punta Gorda	3	270
6″.3 B. L. R.	Punta Lassissi	2	128
Total		8	938

CAVITE.

			Pounds.
6″.3 M. L. R.	Fort San Felipe	2	130
5″.87 B. L. R.	Fort Sangley	2	186
4″.72 B. L. R.	Canacoa	1	50
6″.3 M. L. R.	Cavite Point redoubt	1	100
Total		6	466

10 MANILA.

			Pounds.
9″.45 B. L. R.	Ermita battery	2	635
9″.45 B. L. R.	Under south bastion	1	317.5
9″.45 B. L. R.	Under north bastion	1	317.5
8″.52 M. L. R.	Under south bastion	4	400
8″.52 M. L. R.	In center bastion	5	500
6″.34 M. L. R.	In south bastion	9	522
6″.34 M. L. R.	In north bastion	5	290
6″.34 M. L. R.	South mole redoubt	2	116
5″.87 B. L. R.	Under west wall	2	124
5″.51 B. L. R.	Do.	4	168
4″.72 B. L. R.	South mole redoubt	2	100
4″.72 M. L. R.	River bastion	5	115
4″.72 M. L. R.	N. W. lunette	3	69
3″.09 M. L. R.	Do.	2	19
3″.09 M. L. R.	South bastion	4	38
3″.09 M. L. R.	Under west wall	2	19
Total		53	3,750

IX.

The enemy's vessels were also supported by mines and torpedoes in the entrance to Manila bay and in the bay itself, and some of those in the bay exploded during the action.

X.

The number of officers and men on the vessels of the United States during the battle was 1,836.

The official complement of the Spanish vessels taking part in this battle was as follows:

Reina Cristina	352	Argos	87
Castilla	349	Velasco	147
Don Juan de Austria	179	Isla de Mindanao	120
Don Antonio de Ulloa	159	Manila	77
Isla de Cuba	156	Two torpedo boats	44
Isla de Luzon	156		2,037
Marques del Duero	96		
General Lezo	115		

The following Spanish vessels, *Reina Cristina, Don Juan de Austria, Isla de Cuba, Isla de Luzon,* and *Marques del Duero,* whose total official complements, as above stated, amounted to 939, actually had on board, at the commencement of this action, 1,875 men. The other vessels named had their complements, 1,054 men. The actual number of men on the two torpedo boats cannot be satisfactorily ascertained, but estimated according to the complement of similar United States vessels, the number is 22 each. The total number of men on board the enemy's fleet was 2,973.

XI.

The total number of men on board the vessels stated in finding II to have been destroyed was, at the commencement of the action, 1,914.

XII.

Taking into consideration the guns at Corregidor, El Fraile, and other forts at the entrance of the bay and those at Manila and Cavite, and the torpedoes and mines in the bay and entrance to it, the enemy's force was superior to the force of the vessels of the United States.

Excluding shore batteries and submarine defenses, the American vessels and armaments were superior in force to the Spanish vessels.

Conclusion of Law.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is entitled to recover a judgment for the sum of nine thousand five hundred and seventy dollars ($9,570).

WELDON, J., delivered the opinion of the court:

On the 1st day of May, 1898, the "United States naval force on Asiatic station," under the command of Commodore George Dewey,

in the prosecution of the war declared by the United States on the 25th day of April, 1898 (as dating from the 21st of April, 1898), against the Kingdom of Spain, encountered the Spanish squadron in the waters of Manila bay off the coast of the island of Luzon, and in an engagement lasting from 5.15 a. m. until 12.30 p. m. the United States forces succeeded in destroying and capturing the whole of the Spanish fleet and the achievement of a victory having scarcely a parallel in the annals of naval warfare. As a result of that victory the honorable the Secretary of the Navy addressed a communication to this court, under the provisions of the act of March 3, 1883, entitled "An act to afford assistance and relief to Congress and the executive departments in the investigation of claims and demands against the Government" (22 Stat. L., 485), as
11 amended by section 13 of the act entitled "An act to provide for the bringing of suits against the Government of the United States," approved March 3, 1887 (24 Stat. L., 507), embodying the following questions:

"1. Whether the vessels for the sinking or destruction of which bounty is claimed were of inferior or of equal or superior force to the vessels of the United States engaged, and whether such vessels of the enemy were sunk or destroyed in action or 'in consequence of injuries sustained in action,' or immediately thereafter 'for the public interest,' as contemplated in the last clause of section 4635 of the Revised Statutes.

"The determination of these questions will fix the rate of bounty to be paid at $200, or $100, 'for each person on board' such vessel of the enemy 'at the commencement of the engagement,' or $50 'for every person * * * on board at the time of such capture,' as the case may be.

"2. What vessels of the enemy among those sunk or destroyed fall within the statutory provisions authorizing the payment of bounty.

"3. What vessels of the United States are, in any given case, entitled to share in bounty."

Embraced in the communication by the Secretary are the following paragraphs:

"It may be proper to add that the attitude of the department toward these claims is not in any sense one of hostility, it being considered that the claimants belong to a meritorious class upon whom the Government had by statute directed the bestowal of bounty for the performance of patriotic service. The department does not, therefore, desire to antagonize these claims, but seeks merely, by the reference herein made, to secure the judicial ascertainment of the rights of all parties concerned in order that the nation's bounty may be promptly and equitably dispensed.

"Entertaining these views it is requested that such early procedure in the matter may be had as the court may find practicable."

Accompanying the foregoing communication the Secretary transmitted, in pursuance of the statute, all papers in his department applicable to the subject-matter.

In pursuance of such reference, the claimant filed a petition, in which it is in substance alleged that on the 1st of May, 1898, an engagement took place between the ships of the United States under his command and vessels of war belonging to the Kingdom of Spain; and as a result of such engagement a number of Spanish vessels of war were sunk or otherwise destroyed; that the number of men on board of the enemy's vessels at the commencement of the engagement was in excess of the number on board of the American vessels; that in said engagement the enemy's ships were supported by powerful shore batteries and torpedoes, and that the enemy's vessels, supported as aforesaid, were of superior force to the vessels of the United States. It is also averred that some of the vessels belonging to the enemy were not destroyed, and have since been repaired and taken into the service of the United States, and for such vessels no compensation is sought in this proceeding.

The petition concludes with a prayer for a judgment under the thirteenth section of said last-named act upon the ground that the claimant has a legal claim under the provision of section 4635, of the Revised Statutes.

The claimant having averred the right of a judgment under the thirteenth section of the act of 1887 (*supra*), it becomes necessary, as a preliminary question, to determine the right of the claimant to such judgment, in addition to a report of the facts and opinion of the court to the department under the act of March 3, 1883 (*supra*).

The thirteenth section of the act of 1887 provides * * * "If it shall appear to the satisfaction of the court, upon the facts established, that it has jurisdiction to render a judgment or decree thereon under existing law, or under the provision of this act, it shall proceed to do so, giving to either party such opportunity for hearing as in its judgment, justice shall require, and report its proceedings therein to either House of Congress or to the department by which the same was referred to this court."

The claim which is made in this proceeding is based upon section 4635, of the Revised Statutes, the latter part of which is as follows:

"A bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement, which is sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars, if the enemy's vessel was of *inferior force*, and of two hundred dollars, if of equal or *superior force*, to be divided among the officers and crew in the same manner as prize money."

Though many cases have been prosecuted under the act of the 3d of March, 1883, and the act of 3d of March, 1887, since
12 the passage of the last act, in which the claimant has sought a final judgment, the court has not in the exercise of its plenary judicial function determined the rights of the claimant except as advisory, either of Congress or the department.

The purpose of the thirteenth section is to settle and adjust contro-

versies and claims upon the basis of the legal right to recover, where that can be done, leaving the parties subject only to the jurisdiction of this and the Supreme Court. The act of the 3d of March, 1887, provides jurisdiction in this court in "all claims founded upon the Constitution of the United States or any law of Congress."

Applying the facts found to the thirteenth section of the act of March, 1887 (*supra*), and to the first clause of said act defining the jurisdiction of this court, "it appears to the satisfaction of the court" that the claimant is entitled to recover a judgment in this proceeding for the amount which, from our construction of section 4635, of the Revised Statutes, we may determine is due him as the commander of the United States naval forces in what is known as the battle of Manila bay.

The issue in this case is limited in its range as a judicial inquiry to a construction of a statute of the United States which, though of long standing, has never been judicially construed by the Supreme Court to the extent of settling by an authoritative construction the exact question involved in this inquiry.

This court is therefore required to perform the duty of determining the purpose and intent of the legislature in the enactment of the statute under which the claim is made, unaided by judicial determination by the court of ultimate interpretation and decision.

The first inquiry addressed to the court by the honorable the Secretary of the Navy is as follows:

"1. Whether the vessels for the sinking or destruction of which bounty is claimed were of inferior or of equal or superior force to the vessels of the United States engaged, and whether such vessels of the enemy were sunk or destroyed in action or 'in consequence of injuries sustained in action,' or immediately thereafter 'for the public interest,' as contemplated in the last clause of section 4635 of the Revised Statutes?"

By reference to the findings it will be seen that that question is answered in two forms not contradictory of each other, but in order to meet the difference in the construction of the statute on the part of the claimant and the defendants. It is shown that—quoting the substance of the findings—that leaving aside shore batteries and submarine defenses, the American ships and armament were superior in force to the Spanish ships and armament, but taking into consideration the guns at Corregidor,-El Fraile, and other forts at the entrance of the bay, and those at Manila and Cavite, and the torpedoes and mines in the bay and entrance to it, the enemy's force was superior to the force of the vessels of the United States.

The second inquiry propounded by the communication of the Secretary of the Navy is as follows: "What vessels of the enemy among those sunk or destroyed fall within the statutory provisions authorizing the payment of bounty?" An answer to this question may be found in the findings of fact preceding this opinion and upon which it is based.

The third inquiry is as follows: "What vessels of the United States are, in any given case, entitled to share in bounty?"

In connection with that inquiry the communication states:

"The question whether the provisions of section 4635, are applicable to such vessels of the United States only as participated actively in the destruction of the enemy's vessels, or extend to those within signal distance of the vessel or vessels so participating, is doubtless involved in this branch of the subject; but, whether this be true or not, it is evident that the difficulties enumerated under the second question again arise here. Upon various occasions during the war, when vessels of the enemy were destroyed, there were present and either actively participating or within signal distance vessels of the regular Navy of the United States; 'converted' vessels, of which the *Gloucester* may be mentioned as a type; chartered vessels, such as the *St. Paul;* vessels of the revenue cutter, Coast Survey, and light-house services; dispatch-boats, transports, colliers, supply and hospital vessels, etc. While the applicability of section 4635 of the Revised Statutes to some of these vessels is entirely clear, it is not so as to others, and equitable distribution of bounty cannot be made until the rights of all claiming to share therein shall have been determined."

Having determined that the claimant is entitled to a judgment under the thirteenth section of the act of March 3, 1887 (*supra*), as the inquiry propounded in the third interrogatory does not properly arise in this proceeding, and as we are advised that the question arises in other cases pending in this court coming within the reference of the Secretary of the Navy, we reserve an answer to interrogatory third until the trial and decision of a case in which the question is properly involved. The communication of the Secretary of the Navy being applicable to the other cases, and other counsel appearing in those cases, it is proper that we should confine the opinion in this case to the limits of the legal controversy established by the facts of the present proceeding.

13

The only question about which there is any contention is whether the crews of the American ships are entitled to the sum of $100, upon the theory that in legal contemplation the vessels of the United States were of superior force to those of the Spanish fleet, or whether they are entitled to $200 each, upon the theory that in law the vessels of the United States were inferior in force to the Spanish vessels. It is contended on the part of the claimants that the vessels of the United States were inferior in force to the Spanish vessels, while it is contended by the defendants that they were of superior force. If the contention is to be determined by adding to the Spanish force of the vessels the batteries on shore, the mines and torpedoes of Manila bay, then the Spanish vessels, as constituting a condition, were superior to the force of the American vessels. As has been said, no decision of the Supreme Court has determined the exact question as presented by this record, and which constitutes the issue in this proceeding.

In the examination of the case we have most carefully considered the decision upon which the counsel for the claimant predicate the theory that the environment of the Spanish vessels is to be included

in the determination of the question as to the relative force of the respective fleets.

The case of the United States against Farragut, decided by the Supreme Court of the United States and reported in 22 Wallace, 406, was an appeal from the court of the District of Columbia in a case growing out of the capture of New Orleans by Admiral Farragut in the year 1862.

It is said in substance, in the statement of the case in the Supreme Court of the United States, that the result of the reduction of the forts was the capture of large number of vessels, coal, and other property. All this property was appraised at the time by a board of officers duly appointed for that purpose. But there being no district court in the eastern district of Louisiana open at that time, and much of the property steamers unfit to be sent to sea, and much of it being necessarily used by the Army and Navy of the United States in their further operations in the Gulf and Mississippi river, none of it was sent to be condemned, but appraised at the time of the capture.

Congress accordingly on the 3d of March, 1869 (15 Stat., 336), passed an act in substance that the said vessels shall now be entitled to the benefit of prize law in the same manner as they would have been had the district court for the eastern district of Louisiana been opened and the property taken by said vessels, had been libeled therein; and any court of the United States having admiralty jurisdiction may take and have cognizance of all cases arising out of said capture. In pursuance of that statute a libel was filed in the supreme court of the District of Columbia on the 26th of April, 1869.

While said proceeding was pending in the supreme court of the District, the subject-matter of the proceeding was referred to the determination of arbitrators chosen by the respective parties, and it was agreed that their award should be final upon all questions of law and fact involved in the cases, and that such award might be entered as a rule and decree of the court.

The arbitrators chosen as aforesaid made an award as follows, to wit:

"First. That the capture was not a conjoint operation of the Army and Navy.

"Second. That the 42 vessels whose names were given produced in the capture of the United States.

* * * * * * *

"Fifth. That all this property was lawful prize of war and lawfully subject to condemnation as such.

"Sixth. That in the engagement which resulted in the capture of those ships the entire force of the enemy was superior to the United States ships and vessels engaged."

The United States made a motion to set aside the award controverting all the facts found by the arbitrators; but the court refused to set aside the award, and on the contrary, entered a decree of the court confirming the award. From that decree the United States

took an appeal. After the case came into the Supreme Court of the United States, the Attorney General dismissed the appeal as to the coal and certain vessels, amounting in the aggregate sum of $613,520. In the Supreme Court some of the exceptions to the report of the arbitrators were considered; and it is said "Where the award finds facts it is conclusive; where it finds and announces concrete propositions of law, unmixed with facts, its mistake, if one is made, could have been corrected in the court below, and can be corrected here. Where the proposition is one of mixed law and fact in which the error of law, if there be one, cannot be distinctly shown, the parties must abide by the award." The court says, "A glance at
14 these grounds will show that all of them except the last is an attempt to reopen the question submitted to the arbitrators, because they had decided erroneously questions of pure fact or of law and fact in which the former was so mingled with the latter as to be inseparable."

The court further says, "Having found the captor, the property captured, the name and character of the vessel engaged in it, and the nature of the capture, the only question open was the character of the captured property." The court concluded that "It does not appear, therefore, that in holding these vessels liable to capture in condemnation as lawful prizes of war the arbitrators violated any principle of prize law; but it is quite clear that in awarding the value of these vessels to the captors as prize, and in addition 40 per cent. that value for salvage, they did violate law and justice." The last of the opinion has reference to certain vessels which belonged to certain loyal owners which were delivered to them, and upon which the decree allowed military salvage. That portion of the decree was held to be erroneous by the Supreme Court, and was therefore reversed.

The finding of the arbitrators and the court below that the force of the enemy was superior to the force of the United States ships and vessels was accepted as true by the Supreme Court, and, therefore, no question was made as to whether the superiority of force was to be determined by the force on board the ships of the enemy or might include, as a force of the enemy's ships, the forts and batteries on land.

From the well-known facts of history, it must be assumed that the force which was overcome by Admiral Farragut in the capture of the prizes was superior because of the forts and batteries on shore; and that in making the award and entry of the decree the force of such forts and batteries were included in calculating the force of the enemy employed in the engagement.

The decision and decree of the district court supports the contention made by the counsel for the claimant; but the decision of Supreme Court did not reach the question at issue in this case, for the reason that it was not properly before the court at the time the case was decided, having been eliminated by the withdrawal of the appeal as to the prize vessels affected by that question, and the further reason that the fourth finding of the award and the decree was upon a question of fact which the Supreme Court by its reason-

ing held to be conclusive and not the subject of inquiry in the appellate court.

The case of *Porter v. The United States* (106 U. S. R., 607) does not affect the question involved in this case. In that case a decree had been entered in the district court of the District of Columbia upon the legal theory that, in estimating the force of the enemy, the force of "batteries and other adjuncts" might be included in the force of the enemy in determining the rights of the capturing or destroying vessels. That decree, as it is said in the brief of counsel for the claimant, was reversed on other grounds in general term of the district court. On the appeal of the case to the Supreme Court the only question decided is as to the rights of the claimants to bounty under the act upon which it is claimed in this proceeding. That case involved the right of bounty where the destruction was the result of combined efforts of the land and naval forces acting in conjunction with each other. It was held, in substance, by the Supreme Court that bounty was not allowed by the act of Congress of June 30, 1864, c. 174, where the vessels of the enemy were during the rebellion destroyed by the combined action of the sea and land forces of the United States.

The court says:

"No pecuniary reward is conferred for anything taken or destroyed by the navy when it acts in conjunction with the army in the capture of a fortified position of the enemy, though the meritorious services and gallant conduct of its officers and men may justly entitle them to honorable mention in the history of the country."

The same doctrine is enunciated in the case of the *Siren*. (13 Wall., 389.)

In the case of the *Selman* (21 Fed. Cases, p. 1045), cited by claimants, the question discussed and decided was as to the right of a certain ship to share in the distribution of the prize—it being within what is called signal distance. Although that question is very ably treated by the learned judge in the opinion, it sheds but little light, if any, upon the question involved in this case. There was no controversy in that proceeding as to whether the capturing force was inferior or superior to the captured vessels. The only thing which is said in the opinion which can be utilized as indicative of the proper construction of the statute is that it is said by the court: "In cases arising under this part of the statute, it is held that the object of the legislature was to encourage personal gallantry and exertion, and constructive captures are, as a general rule, excluded from sharing in this bounty, although under the same statutes and concerning the same vessels they may come in as takers of the prize itself." So it is said in this case, by counsel for claimant, that the policy of the legislature was to encourage heroism and personal courage in the naval service of the United
15 States, and that where a condition of great danger is braved and overcome that the force of that condition and danger may be included within what is technically known as the force of the vessel. That is an argument in favor of the construction con-

tended for by the claimant, and in a doubtful case growing out of the ambiguity of the law it should be entitled to forceful respect.

In the case of the *Cherokee* decided in the district court of Massachusetts (5 Fed. Cases, p. 550) involving a controversy as to who was entitled to share, and not as to whether the capturing vessels were of superior or inferior force; and although the case is very elaborately discussed in the opinion of the learned judge, as it did not involve the issue in this case, nothing is said tending to guide the court in the construction of the statute under consideration. It may be regarded as remarkable that in many cases coming within prize jurisdiction after the passage of the act of 1864, the question of inferior and superior force of respective fleets has not been discussed and decided, but so it is.

We have carefully examined the decisions cited by counsel for the claimant in the oral argument, but do not find that they maintain the theory of construction upon which the demand for the larger amount of the statute is claimed.

Aside from the decision and decree of the district court of the District of Columbia, founded on the award of an arbitration, we are without express authority upon the proper construction of the statutes upon the question at issue in this proceeding, and must therefore subject to that decision determine for ourselves our duty in the premises.

The findings show that the force of the vessels of the United States were superior to those of the enemy, disjoined from the force arising from forts and batteries on the shore of Manila bay and torpedoes and mines within the waters of the bay; but if to the force of the Spanish vessels there be added the belligerent power of the forts, batteries, torpedoes, and mines, as a part of the condition arising from their environment, the force of the Spanish vessels was superior to the force of the vessels of the United States. The statute under which the claim is made provides "that a bounty shall be paid by the United States for each person on board any vessel or vessels of war belonging to an enemy at the commencement of an engagement which is sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States, or which it may be necessary to destroy in consequence of the injuries sustained in action, of $100 if the enemy's vessel was of inferior force, and $200 if of equal or superior force, to be divided among the officers and crew in the same manner as prize money."

The question arising upon the statute is as to what is meant by the term, "if the enemy's vessel was of inferior, * * * if of equal or superior force." Is the force contemplated by the statute such force only as is necessarily incident to the men employed upon the vessel, and to the force of the vessel arising from its construction, its armament, equipment, and development as an instrumentality of war? It will be seen that the force specified by the terms of the law is the force of "the enemy's vessel," thereby in terms precluding from the consideration of force the environment of power which may surround the vessel, but forming no necessary part or portion of it. The statute under consideration is to receive

by the court such a construction as its terms necessarily import and require. It is not a question of what might be called unwritten law, but a question of purely statutory construction, and the intent of the legislature must be deduced from the terms employed in the phraseology and words of the statute. Courts have no power other than the interpretation of the law as in their judgment it exists. Questions of policy addressing themselves to other branches of the Government are not incident to the judiciary. They have no policy and no authority save and except the declaration and application of the law as in their judgment it may seem to exist. Congress have passed the statute and defined its purposes in the express averment of words. Courts are constrained to follow the import of those words in the determination of the rights of parties and of the Government. In doubtful cases arising from ambiguous language courts will inquire into surrounding circumstances, having in view the history of the times and the condition intended to be affected by the law in coming to a conclusion as to its proper construction. But unambiguous words, importing in and of themselves the purpose and will of the legislature, must be permitted to perform their legitimate functions in the development and ascertainment of that will. Congress intended, by the act of 1864, to reward, as has been said, personal bravery and gallant encounter, but it does not follow from that that they intended beyond what they have expressed in the words of the law.

No cases have arisen upon the statute involved in this proceeding except the cases referred to, and none can arise hereafter, as Congress on March 3, 1899 (30 Stat. L., 1007), repealed all the provisions of law "authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy hereafter occurring in time of war."

From this view of the law, the court determines that the claimant is entitled to recover on the basis of fact, that excluding the batteries, torpedoes, and mines, the force of the vessels of the Spanish fleet was inferior to the force of the American vessels, and that therefore the claim comes within that clause of the law which allows the sum of $100 for each person on board the vessels sunk and destroyed, and a judgment is hereby ordered on that theory for the sum of nine thousand five hundred and seventy dollars.

16 V.—*Judgment.*

Filed February 26, 1900.

GEORGE DEWEY
vs.
THE UNITED STATES. } No. 51. Naval Bounty.

At a Court of Claims held in the city of Washington on the 26th day of February, 1900, judgment was ordered to be entered up as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the claimant, George Dewey, do have and recover of and from the United States the sum of nine thousand five hundred and seventy dollars ($9,570).

BY THE COURT.

17 VI.—*Motion for Appeal.*

Filed March 1, 1900.

In the Court of Claims, Term 1899–1900.

GEORGE DEWEY
v.
THE UNITED STATES. } No. 51. Naval Bounty.

Motion for appeal.

Now comes George Dewey, the claimant herein, by his attorneys, H. A. Herbert and Benjamin Micou, and prays an appeal to the Supreme Court of the United States from the judgment of this court entered on the 26th day of February, 1900, so far as the same is adverse to his claim, and the claimant moves the court for an allowance of this appeal.

HERBERT & MICOU,
Attorneys for Claimant.
CHARLES & WILLIAM B. KING,
Counsel.

18 VII.—*Allowance of Appeal.*

GEORGE DEWEY
vs.
THE UNITED STATES. } No. 51. Naval Bounty.

At a Court of Claims held in the city of Washington on the 1st day of March, 1900, an application was presented for the allowance of an appeal by the claimant filed of this date, and it was ordered that the appeal be allowed as prayed for.

BY THE COURT.

19 In the Court of Claims.

GEORGE DEWEY
vs.
THE UNITED STATES. } No. 51. Naval Bounty.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of

the judgment of the court, of the application for and allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 2d day of March, A. D. 1900.

[Seal of Court of Claims.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Endorsed on cover: File No., 17,660. Court of Claims. Term No., 546. George Dewey, appellant, *vs.* The United States. Filed March 2nd, 1900.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

GEORGE DEWEY, APPELLANT,
v.
THE UNITED STATES. } No. 546.

MOTION TO ADVANCE.

The Solicitor-General moves the court to advance this cause for argument, on a day during the present term convenient to the court if possible, for the following reasons:

This is the claim of Admiral Dewey for bounty due under section 4635, R. S., for the destruction of the enemy's vessels at the battle of Manila Bay, on May 1, 1898. The appeal is from the judgment of the Court of Claims rendered in favor of the claimant for a less sum than he claims. The point in dispute between the claimant and the Government is whether in determining the relative force of the United States and the enemy for the purpose of fixing the ratio of bounty under section 4635, the entire force of the enemy is to be taken into consideration, or only its force afloat.

The claimants contend that the entire force is to be considered, and that the bounty should be awarded at the

ratio of $200 per man upon the enemy's vessels destroyed, while the court below held to the view that the force afloat alone should be considered, and consequently allowed bounty at the rate of $100 per man on the enemy's vessels destroyed. The judgment of the court below in favor of Admiral Dewey is for $9,570, while the appellant's contention is that it should be for $19,140.

There are several reasons for the advancement of the cause.

1. The case is a test one of an important class. The amount admitted by the findings of the Court of Claims to be due to Admiral Dewey, his officers and men, is $191,400. The amount claimed by them is twice that sum. But it is not alone the litigation in the Court of Claims which will be affected by the decision in this case. A libel in prize is pending in the supreme court of the District of Columbia, and the same question of law arises in that case as in this, and is to be decided upon substantially the same ground. The decision in this case will affect the decision of the supreme court of the District of Columbia in that case. The number of individual claimants in the claims arising at Manila Bay is about 1,900. Other like cases at Santiago, Manzanillo, and elsewhere, which may be affected by the decision in this case, number about 2,300 more. The case, therefore, is a class case of importance.

2. But another still more important reason exists for an early hearing. The bounty granted by this statute is a reward for the personal services of the Admiral, his officers, and men. It is now nearly two years since the battle was fought, and neither bounty nor prize money

has yet been paid. The rules on which payment should be made, it is submitted, ought to be settled by the courts speedily, so that the beneficiaries may receive the pecuniary reward of their gallant services as soon as possible. Especially urgent is this in the case of the enlisted men who participated in this battle. The terms of enlistment of many of these men have now expired, and while some remain in the Navy, others are scattered to all parts of the world. No class of men are so likely to be lost sight of as sailors, and the longer payment of the amount due is delayed the greater is the danger that some of the men behind the guns will fail to receive what is due them. The propriety of prompt action on matters of this kind is declared by Sir William Scott in a case involving the right to head money, La Gloire (Edwards, 280), as follows:

> This suit has been long depending, although it is of a nature which, in a peculiar degree, requires to be brought to its determination with the greatest expedition.
>
> Matter of this kind can not, consistently with the honor of the court, be permitted to be hung up for so many years together. The court must prescribe a limitation of time for such claims. If head money is to be considered as the reward of personal exertion, all questions arising out of it ought to be brought to an early determination, and not to be kept fluctuating in a state of uncertainty until many of the persons interested are consigned to their graves.

Opposing counsel concur in this motion.

JOHN K. RICHARDS,
Solicitor-General.

MARCH 1, 1900.

O

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

GEORGE DEWEY, *Appellant*,
v.
THE UNITED STATES.

No. 546.
Appeal from the Court of Claims.

STATEMENT OF CASE, ASSIGNMENT OF ERROR AND ARGUMENT FOR APPELLANT.

Statement of Case.

This is an appeal by the claimant from the judgment of the Court of Claims in an action for bounty for destruction of the enemy's vessels at the battle of Manila Bay on May 1, 1898. The court rendered a judgment in favor of the claimant for one-half of the amount claimed.

The statute under which this action is brought is § 4635 of the Revised Statutes, as follows:

"A bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement, which is sunk or otherwise destroyed in such engagement, by any ship or vessel belonging to the United States or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars, if the enemy's vessel was of inferior force and of two hundred dollars, if of equal or superior force, to be divided among the officers and crew in the same manner as prize money."

The Court of Claims found (Rec. p. 12) that the engagement resulting in the destruction of the enemy's

vessels was between vessels of war of the United States and vessels of war belonging to the King of Spain, supported by shore batteries, submarine mines and torpedoes; that the enemy's force, without considering the supporting shore batteries and submarine defenses, was inferior to the force of the United States; but, considering the shore batteries and submarine defenses, was superior. The court decided that the comparison of forces contemplated by the statute did not admit of considering the shore batteries and submarine defenses as any part of the force of the enemy's vessels destroyed, and consequently, having fixed the number of men on the vessels destroyed at 1914, held that bounty should be allowed only at the inferior rate of $100 a man, a total of $191,400, and rendered judgment for the claimant, as commanding officer of the fleet, for five per cent of the entire bounty, the share fixed by § 4631, Revised Statutes. It is from this judgment that the present appeal is taken.

Assignment of Error.

For error the claimant avers that the court erred in law in holding that the supporting shore batteries and submarine defenses should not be considered as part of the force of the Spanish vessels destroyed for the purpose of determining the bounty *per capita* due under this statute.

ARGUMENT.

The Positions of the Parties.

The Court of Claims, in its elaborate opinion upon this subject, declared that a literal construction of the statute required, in comparing the forces, that the batteries, torpedoes and mines be excluded. The opinion says:

"The question arising upon the statute is as to what is meant by the term, 'if the enemy's vessel was of inferior,

* * * if of equal or superior force.' Is the force contemplated by the statute such force only as is necessarily incident to the men employed upon the vessel, and to the force of the vessel arising from its construction, its armament, equipment, and development as an instrumentality of war? It will be seen that the force specified by the terms of the law is the force of 'the enemy's vessel,' thereby in terms precluding from the consideration of force the environment of power which may surround the vessel, but forming no necessary part or portion of it. The statute under consideration is to receive by the court such a construction as its terms necessarily import and require. It is not a question of what might be called unwritten law, but a question of purely statutory construction, and the intent of the legislature must be deduced from the terms employed in the phraseology and words of the statute. Courts have no power other than the interpretation of the law as in their judgment it exists. Questions of policy addressing themselves to other branches of the Government are not incident to the judiciary. They have no policy and no authority save and except the declaration and application of the law as in their judgment it may seem to exist. Congress have passed the statute and defined its purposes in the express averment of words. Courts are constrained to follow the import of those words in the determination of the rights of parties and of the Government. In doubtful cases arising from ambiguous language courts will inquire into surrounding circumstances, having in view the history of the times and the condition intended to be affected by the law in coming to a conclusion as to its proper construction. But unambiguous words, importing in and of themselves the purpose and will of the legislature, must be permitted to perform their legitimate functions in the development and ascertainment of that will. Congress intended, by the act of 1864, to reward, as has been said, personal bravery and gallant encounter, but it does not follow from that that they intended beyond what they have expressed in the words of the law.

"No cases have arisen upon the statute involved in this proceeding except the cases referred to, and none can arise hereafter, as Congress on March 3, 1899 (30 Stat. L.

1007), repealed all the provisions of law 'authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy hereafter occurring in time of war.'

"From this view of the law, the court determines that the claimant is entitled to recover on the basis of fact, that excluding the batteries, torpedoes and mines, the force of the vessels of the Spanish fleet was inferior to the force of the American vessels, and that therefore the claim comes within that clause of the law which allows the sum of $100 for each person on board the vessels sunk and destroyed, and a judgment is hereby ordered on that theory for the sum of nine thousand five hundred and seventy dollars."

The positions of the claimant are,—

(1) That the statute being designed to grant a double reward for a victory over a superior or equal force, it should be applied with a view to carrying out that general purpose and this demands the consideration of the entire force of the enemy in the engagement.

(2) That the words of the statute "if the enemy's vessel was of inferior force" literally mean not alone the force on the particular vessel destroyed, but the entire force supporting it.

The Purpose of the Statute.

The statute declares on its face its general object, to give a greater reward where a greater force is overcome. This is clearly stated by Judge Lowell in *The Selma*, 1 Low. 30; 21 Fed. Cases, 1045:

"This course of decision is ably vindicated by my eminent predecessor, in the case of *The Cherokee* (Case No. 2640), in 1864. His opinion is founded upon the usual and obvious meaning of the language of the statutes, as well as upon their general purpose. And it may be added to the reasons given in that judgment, that the intent of

our law clearly is to encourage personal gallantry, enterprise, and perseverance, whether applied to the capture of armed or unarmed vessels. Thus the whole net proceeds of a prize are given to the captors, when she is of equal or superior force to the vessel or vessels making the capture, but only one-half where she is of inferior force. Again, the head-money which our law grants is larger, when the hostile force is equal or superior, but no head-money at all is given excepting for hostile vessels of war sunk or destroyed, and when due is to be distributed like prize money; showing that the grant is intended as a substitute for the prize itself."

It is plain that, if the general object of this law is to be carried out, the question to be answered in any case is simply—What was the relative strength of the two forces engaged? If the enemy's force was equal or superior, it required greater daring to overcome it than if inferior. The superior gallantry which the law designs to reward is no different, if the superior force attacked is all afloat or partly afloat and partly ashore. Unless the reward is to be granted on some other rule than its relation to the measure of gallantry displayed, the comparison must be between the entire forces. Whether the force of the United States engages an enemy's combined force ashore and afloat, or afloat alone, the comparison must be with the whole force engaged.

The Result of the Present Decision.

Any different rule would lead to such a result as the following: Representing the force of the United States as 100, if an enemy's exactly equal force, all afloat, also represented as 100, was overcome, double bounty would be paid. On the other hand, if a mixed force, afloat and ashore, were engaged of which the force afloat was as 99 and the supporting force ashore as 101, only single bounty would be paid, although in the latter case, the force defeated would have been twice that in the former. Where sup-

posed literalism leads to such an absurdity, courts may well look to the underlying principle of the legislation as the basis for some other rule.

The Principle Illustrated.

This case itself, in the circumstances preceding the engagement, furnishes a striking illustration of this principle. Admiral Montojo, in his report of this battle (Appendix to the Report of the Bureau of Navigation, 1898, p. 89) describes his trip to Subic with his squadron for the purpose of receiving there the expected attack of the American vessels. He thus reports the conditions:

"With much disgust, I found that the guns which should have been mounted on that island were delayed a month and a half. This surprised me, as the shore batteries that the navy had installed (with very little difficulty) at the entrance of the bay of Manila, under the intelligent direction of colonel of naval artillery, Señor Garces, and Lieutenant Beneavente, were ready to fight twenty-four days after the commencement of the work.

"I was also no less disgusted that they confided in the efficacy of the few torpedoes which they had found feasible to put there.

"The entrance was not defended by torpedoes nor by the batteries of the island, so that the squadron would have had to bear the attack of the Americans with its own resources, in 40 meters of water and with little security."

The consequence of these conditions is thus stated by him:

"The same day, the 28th of April, I convened a council of the captains, and all, with the exception of Del Rio, chief of the new arsenal, thought that the situation was insupportable and that we should go to the bay of Manila in order to accept there the battle under less unfavorable conditions."

Thus the purpose of Admiral Montojo's return to Manila Bay was to secure to his vessels the support of the shore batteries, mines and torpedoes there, and he stationed his fleet with a view to making the best possible use of these weapons. The shore batteries, mines and torpedoes at Manila Bay were weapons designed especially to engage ships coming from the sea and to aid a fleet in attacking or resisting the attack of such ships. Such weapons so circumstanced and actually used in attacking and resisting the attack of the American fleet could only be excluded as part of the force of the vessels destroyed upon the idea that in the contemplation of the statute every force of a vessel must be exercised on or from that vessel. We see nothing in the letter of the law to support so strained and limited a construction, totally at variance with its spirit.

Coming to Manila and securing to his vessels the force of the shore batteries, torpedoes and mines there, Admiral Montojo presented to Commodore Dewey a greatly superior force. A greater victory was won under these conditions than had the battle been at Subic Bay, with American vessels matched against Spanish vessels unsupported. It is a direct reversal of the principle of this statute to deny, under these circumstances, double the reward that would be given had Commodore Dewey engaged the inferior naval force alone.

The Shore Defenses the Distinctive Feature of This Engagement.

The circumstances which give the chief permanent glory as a military achievement to the victory of Manila Bay is that the American fleet, unaided by an army, attacked a force composed of ships supported by powerful shore defenses and not only destroyed or captured all the vessels, but captured or silenced the shore batteries. The importance of the engagement to the naval historian is

that the capture of shore defenses was attained by a fleet under such conditions for only the second time in naval history.

This appears from the statement of Admiral P. H. Colomb, R. N., in his recent authoritative work, "Naval Warfare:"

"The fall of Chagres (March 24, 1740) after an attack by bombardment alone, comes upon us now, we may observe, as in some sort a novelty in naval war. We have had captures of forts by the attack of land forces, without any direct assistance from the ships; we have had them when the attack by ships had been made subsidiary to that by land forces; and we have seen the captures made as at Gibraltar and Porto Bello, where the main attack has been by the ships and the land attack has completed it. We have also had bombardments where no surrender has followed. This fall of Chagres appears to be the first instance of capture following simple bombardment, but the course of history shows us that the result was exceptional, and depended on the geographical situation of the place and the moral fibre of the garrison defending it."

No other such capture intervened in the following century and a half preceding the battle of ManilaBay. Farragut passed shore batteries, destroyed the enemy's fleet and captured the shipping in the harbor at New Orleans, some 68 miles by river above the principle shore batteries he engaged; but after the shipping had been captured and General Butler's army had even landed and taken possession of New Orleans, the Confederate flag still floated above Forts St. Philip and Jackson.

Sir George S. Clarke, the eminent English authority, in his standard work, "Fortification," speaks as follows (p. 250):

"From the above it will be evident that comparatively few ships exist which are capable of engaging coast batteries armed with the 6-inch guns. Some battle

ships and some 'coast defense' vessels are suited for the purpose; but the cruiser class, as a whole, and all vessels of European Powers likely to be found across the Atlantic, in the Pacific, in Indian or Cape waters, are disqualified from fighting defenses properly conceived and organized.

* * * * * *

"Modern field guns, well posted behind extemporized cover, would suffice to drive off any one of the ships referred to with much damage and heavy loss."

Do. page 257:

"The unarmored vessels, of which the cruiser fleets of the world are almost entirely composed, even if provided with protected decks, can not stand against any guns which can reach them, and mere water-line belts are more likely to secure the capture of an enemy's ship by keeping her afloat, than to save her from being quickly put out of action by loss of men and by structural injuries, dangerous in proportion to the nearest repairing base."

The same author, concluding a detailed consideration of parapets, guns, mines and torpedoes, says:

"The appliances at the disposal of coast defenses are thus many and powerful. Recent Artillery progress, and in a special sense the perfection of the position finding system have told heavily against the chances of the ship. Meanwhile, the ship herself has grown less capable of attacking coast-defenses, unless specially constructed for the purpose, and even then her protected armament is numerically weak. By far the greater portion of the navies of the world is practically disqualified from a combat with well-mounted guns on shore. Attacks on the defended ports of civilized powers have never figured largely in naval warfare. The experience of the American war showed clearly that the co-operation of a land force was practically essential to success; and purely naval operations against coast works are unlikely to be undertaken in the future, unless there are special reasons to doubt the efficiency of the organization and resources of the defense."

Major R. F. Johnson, R. A., in an article on "The Attack of a Coast Fortress," Proc. R. A. Inst., vol. 20, p. 368, enforces the same view:

"Probably there are few naval officers who do not feel obliged to acknowledge the soundness of Admiral Selwyn's advice: 'I hope that naval officers will consider that a fort is a thing to be avoided.'"

Other British authorities are quoted by him to the same effect (p. 369):

"Captain Jackson, R. N., writes: 'Ordinary sea-going ships of war are not, and never have been, intended by their designers to engage forts. They are built to fight other ships.'

"Rear-Admiral S. Long, R. N., said at the R. U. S. Institution 'If ships are pitted against guns on shore, unarmored ships do not appear so favorably situated as in the days of wooden ships.'

"And Vice-Admiral Sir E. Fremantle, in the subsequent discussion, agreed 'that the armament of our cruisers is such that the strength of a cruiser is only sufficient to fight its own equal, that she is not of much value against a fort.'"

Captain C. Benoit of the French Army, in an article entitled "Navires de Guerre et Batteries de Côte (Revue d'Artillerie, vol. 54, April, 1899, p. 5), quotes the opinion of Admiral Fournier:

"It will be imprudent to expose our ships against coast defenses in unproductive battles, much more enfeebling and demoralizing, in general, for the assailants by sea than for the defense on land."

The same author quotes also from "Des Operations Maritimes Contre les Côtes," etc.:

"The ravage of the coasts by the guns of the fleets is often spoken of; it is in general a fantasy which has no further merit than to attract attention."

Lieutenant-Commander (now Captain) Charles F. Goodrich, U. S. N., in an official report on the bombardment of Alexandria in 1882 (Report of British Naval and Military Operations in Egypt, 1882, Office of Naval Intelligence, War Series, No. III), says (p. 74):

"Having the essential facts of the last engagement between ships and earthworks at hand, it is impossible not to draw one broad inference, that vessels are not yet and never will be able to fight on even terms with forts."

Do. page 75:

"The forts at Alexandria were badly bruised, but the more modern parapets were not seriously harmed. In the generality of cases the real damage they sustained could have been easily repaired in a single night. If the bombardment was directed against the forts in this their defensive capacity it must be pronounced a failure.

* * * * * *

"The British, while surprised by the tenacity of their opponents, were the first to confess that men of a stamp at all similar to their own would have accepted the gage thrown down the next day, and have renewed the fight."

All this concurrent testimony of high authorities leads to the conclusion that the most important feature of the engagement at Manila Bay, the chief mark of its preeminence in naval history, is to be omitted entirely from consideration in deciding the pecuniary reward bestowed on the victors by the United States, if the judgment of the Court of Claims is to stand. So unreasonable a result is not to be reached unless the statute clearly forbids a better conclusion.

The Value of Mines and Torpedoes.

The Court of Claims equally excludes the torpedoes and submarine mines from consideration. These, too, were important factors in the result, and, with an overcautious commander, might have prevented the bold en-

trance which foretold the coming victory. Major R. F. Johnson, R. A., in the paper already cited, says (p. 367):

"Submarine mines are generally credited with exerting a great moral effect, even when the local conditions are most unfavorable to their use, but this will be worth nothing at all if a Farragut commands the attack."

Surely we may couple with the name of Farragut that of the later commander who learned his lesson under Farragut and applied it with like boldness at Manila Bay. And we may add that it can not have been in the contemplation of Congress to withhold any portion of the larger reward granted for overcoming a superior force because its superiority consisted in part of these rightly-feared submarine mines and torpedoes.

Earlier Precedents.

It is not surprising, in view of the purpose of the law, to find that this opinion of the Court of Claims is the first approval by any judicial tribunal of the principle that in the comparison of the forces of vessels under the bounty and prize laws the shore batteries and submarine mines aiding and protecting them are not to be considered. Nor can it be found that at any time the executive authority of the Government having jurisdiction over the proceedings in prize and bounty cases ever authoritatively assumed this position.

The Court of Claims, in its opinion (Rec. pp. 17, 18) states, with great care, the circumstances under which an award was made and paid to Admiral Farragut and his officers and men for prize money and bounty arising out of the capture of New Orleans (*United States* v. *Farragut*, 22 Wal. 406). The history of this case is so thoroughly stated by the Court of Claims, and its bearing so important, that the statement of that court is here inserted (see Rec. pp. 17, 18):

"The case of the United States against Farragut,

decided by the Supreme Court of the United States and reported in 22 Wallace, 406, was an appeal from the court of the District of Columbia in a case growing out of the capture of New Orleans by Admiral Farragut in the year 1862.

"It is said in substance, in the statement of the case in the Supreme Court of the United States, that the result of the reduction of the forts was the capture of large number of vessels, coal, and other property. All this property was appraised at the time by a board of officers duly appointed for that purpose. But there being no district court in the eastern district of Louisiana open at that time, and much of the property steamers unfit to be sent to sea, and much of it being necessarily used by the Army and Navy of the United States in their further operations in the Gulf and Mississippi River, none of it was sent to be condemned, but appraised at the time of the capture.

"Congress accordingly on the 3d of March, 1869 (15 Stat., 336), passed an act in substance that the said vessels shall now be entitled to the benefit of prize law in the same manner as they would have been had the district court for the eastern district of Louisiana been opened and the property taken by said vessels, had been libeled therein; and any court of the United States having admiralty jurisdiction may take and have cognizance of all cases arising out of said capture. In pursuance of that statute a libel was filed in the Supreme Court of the District of Columbia on the 26th of April, 1869.

"While said proceeding was pending in the Supreme Court of the District, the subject-matter of the proceeding was referred to the determination of arbitrators chosen by the respective parties, and it was agreed that their award should be final upon all questions of law and fact involved in the cases, and that such award might be entered as a rule and decree of the court.

"The arbitrators chosen as aforesaid made an award as follows, to wit:

"'First. That the capture was not a conjoint operation of the Army and Navy.

"'Second. That the 42 vessels whose names were given produced in the captnre of the United States.

* * * * * * *

"'Fifth. That all this property was lawful prize of war and lawfully subject to condemnation as such.

"'Sixth. That in the engagement which resulted in the capture of those ships the entire force of the enemy was superior to the United States ships and vessels engaged.'

"The United States made a motion to set aside the award controverting all the facts found by the arbitrators; but the court refused to set aside the award, and on the contrary, entered a decree of the court confirming the award. From that decree the United States took an appeal. After the case came into the Supreme Court of the United States, the Attorney-General dismissed the appeal as to the coal and certain vessels, amounting in the aggregate sum of $613,520. In the Supreme Court some of the exceptions to the report of the arbitrators were considered; and it is said 'where the award finds facts it is conclusive; where it finds and announces concrete propositions of law, unmixed with facts, its mistake, if one is made, could have been corrected in the court below, and can be corrected here. Where the proposition is one of mixed law and fact in which the error of law, if there be one, can not be distinctly shown, the parties must abide by the award.' The court says, 'A glance at these grounds will show that all of them except the last is an attempt to reopen the question submitted to the arbitrators, because they had decided erroneously questions of pure fact or of law and fact in which the former was so mingled with the latter as to be inseparable.'

"The court further says, 'Having found the captor, the property captured, the name and character of the vessel engaged in it, and the nature of the capture, the only question open was the character of the captured property.' The court concluded that 'It does not appear, therefore, that in holding these vessels liable to capture in condemnation as lawful prizes of war the arbitrators violated any principle of prize law; but it is quite clear that in awarding the value of these vessels to the captors as prize, and in addition 40 per cent. that value for salvage, they did violate law and justice.' The last of the opinion has reference to certain vessels which belonged to certain loyal owners which were delivered to them, and upon which the decree allowed military salvage. That por-

tion of the decree was held to be erroneous by the Supreme Court, and was therefore reversed.

"The finding of the arbitrators and the court below that the force of the enemy was superior to the force of the United States ships and vessels was accepted as true by the Supreme Court, and, therefore, no question was made as to whether the superiority of force was to be determined by the force on board the ships of the enemy or might include, as a force of the enemy's ships, the forts and batteries on land.

"From the well-known facts of history, it must be assumed that the force which was overcome by Admiral Farragut in the capture of the prizes was superior because of the forts and batteries on shore; and that in making the award and entry of the decree the force of such forts and batteries were included in calculating the force of the enemy employed in the engagement."

The Court of Claims concludes, and it must be conceded to be correct in this, that this court did not there reach the question at issue in this case, namely, whether the shore batteries could be included in determining the relative force. Notwithstanding that, this decision in the *Farragut* case presents itself with a very considerable degree of authority in favor of such inclusion. The award, in which was enunciated in its sixth finding the rule for which we now contend, was originally made by a distinguished board of arbitrators (22 Wall. 413) selected with a care worthy of so great a case. It comes with their authority.

The Supreme Court of the District of Columbia, although asked, did not set the award aside, but entered it as its own decree. Thus the award has the authority of that court.

That court might have ordered the arbitrators to state their findings of fact in such manner as to separate the questions of fact and of law, which this court decided were comprised together in the sixth finding of the

award. If the question of law had been deemed worthy of dispute, that court would have so ordered. It was not done because the representatives of the United States, the District Attorney and the special counsel representing the Secretary of the Navy, did not consider the right to include the shore defenses a subject of serious contest. The fourth exception of the Government (22 Wall. 415) does not in terms indicate any attempt to raise this question. Had it been considered an issue, the United States would have insisted on the award being framed in such a way that the points of law and fact might have been separated. The implied acquiescence of the Government's counsel in the doctrine announced by the arbitrators and contended for in this case was indicated by their acceptance of the arbitrators' award in this form and their failure to raise the question in their exceptions.

But the acquiescence of the Executive Department of the Government was shown in a still more conclusive manner by the Attorney-General afterward coming into the Supreme Court of the United States and voluntarily dismissing his appeal as to a portion of the award in which the decision of the arbitrators upon this question was a directly controlling factor, to the extent of one-half of the sum of $613,520, reserving certain other questions in regard to particular vessels. The acquiescence of the executive branch of the Government in this conclusion at this time, so soon after the close of the Civil War, is proof that it was the accepted doctrine in prize and bounty adjudications arising out of the Civil War that all forces should be taken into consideration in determining the relative force of the United States and of the enemy, and that the Secretary of the Navy and the Attorney-General regarded the question as *stare decisis*. The liability of the United States in this respect was thus conceded by its own officers.

The Supreme Court of the District of Columbia, in the case of *Porter* v. *United States*, which afterwards reached this court (106 U. S. 607) arrived again at the same conclusion on this question. Of this the Court of Claims says (Rec. p. 19):

"In that case a decree had been entered in the district court of the District of Columbia upon the legal theory that, in estimating the force of the enemy, the force of 'batteries and other adjuncts' might be included in the force of the enemy in determining the rights of the capturing or destroying vessels."

Here was another decision of the same court exactly opposed to the decision now announced by the Court of Claims, and in this case likewise it nowhere appears that the United States disputed this doctrine. On appeal to this court the Government made no contention on this point, but asserted successfully a defense going to the merits.

This review of the cases cited in the opinion of the court below shows that it was not only the practice of the prize courts to treat shore defenses as a portion of the enemy's force in determining questions of prize money and bounty; but that the executive departments had acquiesced in this rule of decision.

Surely no change should be made in the rule thus long established so as to give to the naval victors of the Spanish war a different measure of reward under the same statute from that received in the Civil War when the statute was much more recently enacted. It should not be done unless the terms of the act show absolutely that Congress intended this unreasonable result and that the decisions of the Supreme Court of the District of Columbia during and after the Civil War and the acquiescence of the executive were entirely unwarranted by law.

The True Literal Construction.

The Court of Claims treats the expression used in § 4635 "if the enemy's vessel was of inferior force" as necessarily limiting the comparison to the force on or exercised from the vessel, excluding every other force, offensive or defensive, and however efficient, that aided the vessel to make or resist attack. In doing this, the court admits that it disregards all questions of the intent of the law and rests itself entirely upon a purely literal construction. Danger can not be reckoned, nor the courage required to meet that danger be estimated along such narrow lines. Yet under the statute the force of the enemy's vessel is the measure of reward for the courage displayed in meeting danger. That courage is not divisible; nor can the force encountered by that courage be divided, and a gun be lopped off here and a torpedo there, which actually took part in the engagement and aided in defending the vessel from destruction, merely because such gun was not fired or such torpedo discharged from the vessel. No such construction is demanded by the words. *Of* imports possession, not location, and the force of a vessel is every force that vessel possesses to aid and protect it in the fight. It is its entire fighting potentiality. A vessel of inferior force is a vessel whose potentiality under the conditions of the battle is less. Submarine mines and supporting shore batteries aiding and protecting it all compose part of the force of a vessel in a naval engagement, and all must be counted in deciding whether the condition has arisen for which the statute gives a double reward, namely, success against superiority of force. Such conditions are all within the literal terms of the statute, "if the enemy's vessel was of inferior force," as they are absolutely required to be considered if regard is to be paid to its purpose.

It can not be said that the statute, because it describes

an engagement between vessel and vessel, did not mean to contemplate any force except that exercised on or from the vessels. There was such a naval combat as the statute contemplates when our armed vessels destroyed armed vessels of the enemy. It would be as reasonable to deny bounty altogether, when part of the fighting potentiality of the vessels destroyed consisted of submarine mines and supporting shore batteries, on the ground of it not having been a naval engagement, as to hold that these fighting forces should not be counted, though actually participating and having to be reckoned with in every manœuver throughout the engagement, from the moment when it was determined to pass the outer defenses of these vessels, the heavy guns at Corregidor, El Fraile, and the entrance to Boca Grande Channel, to the end of the engagement.

It should be continually borne in mind that these submarine mines and shore batteries were peculiarly forces of naval warfare intended to encounter ships and to aid the Spanish vessels in such an encounter. Admiral Montojo states that the shore batteries at the entrance of the Bay of Manila were actually installed by the Navy.

Consequences of an Overstrained Literalism.

This is, indeed, a statute where overstrained literalism will lead to many wholly impossible consequences. The bounty is given for each person on "any ship or vessel of war" of the enemy which is sunk "by any ship or vessel" of the United States. Can it be said as to any one of the enemy's vessels at Manila that it was sunk "by any ship or vessel" of the United States? Each was sunk by the combined assault of the fleet, and no one vessel can claim any other as its victim. The words of the statute, if strictly construed, apply only to an engagement of a single vessel on each side. They do not describe a fleet engagement, such as occurred here, where vessels

of war of the enemy were destroyed by vessels of the United States collectively. They literally only describe such a contest as that between the *Constitution* and the *Guerriere*, or between the *Kearsarge* and the *Alabama*, where there was only one ship on each side. But there never can be a serious contention that this statute should be so literally read as to reach such a decision. The consequence is too absurd; the legislature can not have intended such a result.

We may go a step farther. If there is to be an absolutely strict adherence to the words of the statute, without considering its purpose, the comparison between the enemy's force and the force of the United States must be of all the American vessels participating in the action with only those of the enemy's vessels actually destroyed. Thus, if a single vessel of the United States, itself superior to each of two vessels of the enemy but inferior to them jointly, engaging in battle with them, should sink one and capture the other, such literal adherence as the Court of Claims demands, would give bounty for the destruction of one vessel at the rate of $100 per man, since the vessel actually destroyed was by itself of inferior force to the vessel destroying it. On the other hand, if both vessels were destroyed, then the double bounty would be paid on both. Such an interpretation as this is demanded by the rule of absolute adherence to literal construction announced by the Court of Claims. No one could contend for it, because, unless absolutely required by the terms of the statute, Congress will not be presumed to have intended any such irregular and abnormal distribution of the nation's bounty.

Suppose a naval vessel of the enemy had so surrounded herself with submarine defenses that, taking these into account, her force was clearly superior to that of an attacking vessel of the United States, yet by a torpedo boat attack skilfully managed, an approach was made

and the vessel destroyed, should it be said that, if the vessel alone were of inferior force to the attacking vessel, the single bounty should be paid? The mines would form a part of the vessel's defensive force. Can a construction be correct which would deny double bounty in a case like this involving the greatest gallantry against what the statute makes the decisive test of the right—an enemy of superior force?

Analogy of the Prize Law.

Our laws relating to prize and bounty first appear in the statute of April 23, 1800, §5, 2 Stat. L. 53, vol. 2, ch. 33.

"That the proceeds of all ships and vessels, and the goods taken on board of them, which shall be adjudged good prize, shall when of equal or superior force to the vessel or vessels making the capture, be the sole property of the captors; and when of inferior force, shall be divided equally between the United States and the officers and men making the capture."

Section 7 reads:

"That a bounty shall be paid by the United States of $20 for each person on board any ship of an enemy at the commencement of an engagement, which shall be sunk or destroyed by any ship or vessel belonging to the United States of equal or inferior force, the same being divided among the officers and crew and in the same manner as prize money."

The first of these sections can not be grammatically construed, as it would be absurd to refer the words "of equal or superior force" to the "proceeds" arising from the sale of the prize. We must therefore refer these words, "of equal or superior force," to "the ships and vessels and the goods taken on board of them." Now, the goods taken on board of prize vessels can not possibly be estimated when we are considering the force that is to be

compared with the force making the capture. Yet they must be taken into account, if this statute is to be construed literally. For example, suppose the capture of a barge loaded with coffee, and without a man or a gun upon it; where would be the "force" of that prize? But suppose this barge guarded by a man-of war, superior in fighting force to the capturing vessel. We then have no difficulty at all if we consider that the word "of" in the sentence "all ships or vessels of superior or equal force" is used in the sense of "possessed of." In that case, the captured barge was "possessed of" a defender, the force of which may be reckoned, and of course that force implies fighting force. The insertion of this word furnishes a solution of the whole difficulty. The word "of" has many meanings. The second signification given in Webster is:

"denoting possession or ownership, or the relation of subject to attribute; as, the apartment *of* the Consul, etc."

In the Century Dictionary, before giving specific definitions, we have the statement that this word has been transformed

"through several intermediate gradations of meaning into that of possessing or being possessed by, pertaining to, or being connected with, in almost any relation of thought."

Now, we submit that the case of a prize being possessed of or accompanied by, or having a relation to protecting war-ships, was really the leading idea in the minds of the legislators who framed this bill. At that time it was even more common than it is to-day, to send merchant vessels under a convoy of naval ships; and if we consider the word "of" in this statute as indicating what it means naturally, and what the Congress must have meant, "possessed of," then it follows that Congress never meant that the force of the prize should necessarily be located

upon or operated from that prize. To declare that such was its meaning would be to decide that Congress did the futile thing of excluding from the benefits of its law the most numerous class of the cases it was seeking to provide for.

In 1800, and for many years thereafter, it was the policy of our Government even to equip privateers to prey upon the commerce of an enemy; to cripple him financially was one means of bringing him to terms. During the Revolutionary War our naval vessels had preyed upon the commerce of the enemy and the captures of goods by us had mostly been made from merchantmen, sometimes protected and sometimes unprotected by convoying ships. It surely can not be contended that this law was not meant to embrace captures of that kind. If so, the statute is to be read as if the word "possessed" were inserted before the words "of equal or superior force." If this be admitted we have made one step forward in the solution of the question now before the court, as we have reached the conclusion that the "force" of a prize is not confined to the force operating from and upon the prize itself.

Now, reasoning from this conclusion as a premise, how else can we define the force of a prize than by saying it comprises all the fighting force protecting and defending the prize at the time of the capture, all the force co-operating in the defense of the prize, whether that force consists of torpedoes, submarine mines, or shore batteries, or all of these together? This conclusion we reach simply from the meaning of the word, if we consider that the word "of," as applied to the prize, means "possessed of," a meaning which, according to lexicographers, it frequently has.

This conclusion is fortified by the consideration that this construction carries out the purpose and intent of the law. That Congress intended to reward the sailor in

some proportion at least to the valor he exhibited is too clear for argument. If such was the intent of the law, then the narrow construction put upon this statute by the court below, in excluding from consideration submarine mines and torpedoes and shore batteries, shuts out the heroes of Manila from the rewards that Congress intended they should enjoy. The construction we contend for carries out the purpose of the law.

The conclusion we have reached is still further strengthened by the re-enactment in 1862 of the law, as it was first enacted in 1800, and substantially again in 1864. Then Congress increased the bounty to be given for the destruction of naval vessels. That bounty had been $20, under the law of 1800, where the destroying ship was of equal or inferior force to the enemy. Now it was changed to $100 where the enemy's vessel was of inferior, and $200 where the enemy's vessel was of equal or superior force.

Why so greatly increase at that particular period a bounty which had remained the same for over sixty years? History tells us. We were then at war and the Confederates had invented the submarine torpedo. It was a dangerous weapon, and the very thought of it was demoralizing. It had already destroyed a number of United States vessels. It is not possible to conceive that Congress should have made this large increase in the reward to be given, without once thinking of the deadly torpedo which was at the time in the mind of every sailor and every reader of the newspapers of the day. We must, therefore, conclude, unless we impute to Congress the folly of legislating without reference to existing conditions, and the extravagance of increasing rewards five and ten times over without any sufficient reason, that in adding to the bounty given and using again the words "of equal or superior force," it considered that increased reward should accompany increased dangers that tor-

pedoes and the several other forces co-operating with and defending a vessel, were included by these words.

Our contention, too, justifies the wisdom of Congress in using at the outset generic terms, and in not undertaking to define the word "force" or to prescribe its extent or limitation. Just as the words "regulation of commerce" in the Constitution included every instrumentality of commerce, such as the telegraph, that might come into existence in the future, so the word "force" included every fighting force that might come into existence afterwards in aid of vessels, such as torpedoes and submarine mines. Shore batteries, it is true, were in existence and had often been used, at the time the act was passed in 1800, to defend merchant-ships and war-ships; but if the construction we contend for is correct, then the words of the original law included and were intended to include these batteries. We contend it was the intention of the act of 1800 that if a merchantman, entirely unarmed and lying under the guns of shore batteries, was captured in spite of these batteries, these guns were to be taken into consideration, because they were the force of which the prize was possessed; just exactly as much the force of that prize as a man-of-war lying alongside of the prize would be. To say that the Congress intended to exclude from its prize law a ship captured under these circumstances, or if it did not exclude it as prize, to say that the heroism of the sailors who encountered these shore batteries, was not to be rewarded, is to declare that the act of Congress was much narrower in its effects than was the intention of the legislators, and that to that extent their effort to reward valor was futile.

We submit that there are no words in the statute which compel the court to come to any such conclusion. If there is any expression in the statute that would allow the inclusion of a ship co-operating with a prize and exclude co-operating shore batteries we have been unable to find it.

It follows, of course, that the bounty law is to be construed like the prize law. Both laws are found in the same enactment and use the same words.

Absurd Consequences Avoided.

Reading the statute in this way, all the absurdities resulting from an over-literal construction are avoided. In the case heretofore supposed of an American vessel of superior force to either of two vessels of the enemy, but of inferior force to the two combined, destroying one and capturing the other, it would be entitled to the double bounty for the destruction of one vessel and to double prize money for the capture of the second, just as if both were destroyed or both captured. Thus reading the section, the destruction of a fleet by a fleet would be equally rewarded as of a vessel by a vessel. Equally necessary to the proper result of the statute's purpose is the construction contended for in this case, that the entire opposing forces are to be compared and that the statute considers the force of the vessel to be the force protecting and defending it, whether directly upon it or not.

Elements of Protective Force.

In the case of *The Atlanta*, 3 Wall, 425, this court laid down the principle on which force should be estimated. It was contended that the *Atlanta*, a powerful Confederate ram, had been captured by the *Weehawken*, a vessel in and of itself clearly inferior in force to the prize. The *Nahant*, another United States vessel, was present at the capture and preparing to attack the *Atlanta* when that vessel surrendered. The *Nahant* had not fired a shot, but the court held that it was bound to consider the surrounding circumstances, such as the force, position, conduct, and intention of the *Nahant*, the language of the court being:

"The point presented is whether, under these circumstances, the *Nahant* is to be regarded as one of the cap-

turing vessels within the meaning of the act of Congress. The importance of the point is this: The *Weehawken* was confessedly inferior in force to the *Atlanta*, and if she is alone to be regarded in the comparison of forces, the whole prize money goes to the captors. On the other hand, the combined force of the two monitors was superior to that of the *Atlanta*, and if both are to be regarded as capturing vessels, only one-half of the prize money goes to the captors, and the decree must be affirmed.

"The mere fact that the only shot fired, and the only damage done, was by the *Weehawken*, is not decisive. Other circumstances must be taken into account in determining the matter—such as the force, position, conduct and intention of the *Nahant*. The two vessels were known to be under the same command and of nearly equal force. The *Atlanta* descended the sound to attack both, and governed herself with reference to their combined action. It is not reasonable to suppose that her course would have been the one pursued, had she had only the *Weehawken* to encounter. Besides, the fire of the *Atlanta* was directed entirely to the *Nahant*, and of course diverted her from her consort. It is possible that a different result might have followed had the fire been turned upon the *Weehawken*. This diversion must be considered in every just sense of the term as giving aid to her. Again, the power of the shot of the *Weehawken* had evidently surprised the officers of the *Atlanta*, who found their vessel speedily disabled and their crew demoralized. The advance upon her, at full speed, of a second monitor, of equal force, ready to inflict similar injuries, may have hastened the surrender. It can hardly be supposed that the approach of the second monitor did not enter into the consideration of the captain and officers of the *Atlanta*. If the shot from the guns of one of the monitors could, in a few moments, penetrate the casemate of the *Atlanta*, crush in the bars of her pilot-house, and prostrate between forty and fifty of her men, her captain might well conclude that the combined fire of both would speedily sink his vessel and destroy his entire crew. It can not be affirmed, nor is it reasonable to suppose, that any of the incidents of the battle would have occurred as they did, if the *Nahant* had not been present in the action."

This decision has not only the force conceded for it by the Court of Claims, but it involves the principle that the force to be estimated is the entire potential force surrounding the engagement.

Rules of Liberal Construction.

Ample warrant for liberal construction of this kind is found in the principles laid down by this court in a very celebrated case, that of the *Church of the Holy Trinity* v. *United States* (143 U. S. 457). This court, in considering the contract labor law and the penalties claimed under it on account of a literal construction of its terms, said (p. 458):

"It must be conceded that the act of the corporation is within the letter of this section, for the relation of rector to his church is one of service, and implies labor on the one side with compensation on the other. Not only are the general words labor and service both used, but also, as it were to guard against any narrow interpretation and emphasize a breadth of meaning, to them is added 'of any kind'; and, further, as noticed by the Circuit judge in his opinion, the fifth section, which makes specific exceptions, among them professional actors, artists, lecturers, singers and domestic servants, strengthens the idea that every other kind of labor and service was intended to be reached by the first section."

Yet even after this complete concession that a literal construction of the terms of this statute would include the act complained of in that case the court followed these very words immediately by the following conclusion (p. 459):

"While there is great force to this reasoning, we can not think Congress intended to denounce with penalties a transaction like that in the present case. It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers. This has been often asserted, and the reports are full of cases illus-

trating its application. This is not the substitution of the will of the judge for that of the legislator, for frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act."

The court cited many authorities and concluded the elaborate opinion as follows (p. 472):

"Suppose in the Congress that passed this act some Member had offered a bill which in terms declared that if any Roman Catholic church in this country should contract with Cardinal Manning to come to this country and enter into its services as pastor and priest; or any Episcopal church should enter into a like contract with Canon Farrar; or any Baptist church should make a similar arrangement with Rev. Mr. Spurgeon; or any Jewish synagogue with some eminent Rabbi, such contract should be judged unlawful and void, and the church making it be subject to prosecution and punishment, can it be believed that it would have received a minute of approving thought or a single vote? Yet it is contended that such was in effect the meaning of this statute. The construction invoked can not be accepted as correct. It is a case where there was presented a definite evil, in view of which the legislature used general terms with the purpose of reaching all phases of that evil, and thereafter, unexpectedly, it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against. It is the duty of the courts, under those circumstances, to say that, however broad the language of the statute may be, the act, although within the letter, is not within the intention of the legislature, and therefore can not be within the statute."

See also *Canal Co.* v. *R. R. Co.* 4 Gill & J. 152; *Brown* v. *Somerville*, 8 Md. 444, 456; *Jackson* v. *Collins*, 3 Cow. 89, 96; *Murray* v. *Baker*, 3 Wh. 541.

We do not hesitate to apply to the present case this doctrine and to ask this question. Had the proposition been presented to the Congress that passed this act: "In case of an engagement between vessels of the United States and vessels of the enemy, supported by land batteries and submarine mines, making altogether a force superior to that of the United States, shall the bounty be granted at the rate fixed for an inferior opposing force or at the rate fixed for a superior opposing force?" Would the proposition to give the inferior rate where the superior force was conquered "have received a minute of approving thought or a single vote? Yet it is contended that such was in effect the meaning of this statute. The construction invoked can not be accepted as correct."

The very recent case of *The Buena Ventura* (175 U. S. 384), is also in point. Here was a proclamation whose terms, except by exercising the liberal construction demanded by its purpose, did not literally include this vessel; yet it was held to be included and the court decided that the language was sufficient, because such must have been the intent of the executive. The opinion says:

"To attribute an intention on the part of the Executive to exempt a vessel if she sailed on or after the 21st of April, and before the 21st of May, and to refuse such exemption to a vessel in precisely the same situation, only sailing before the 21st, would, as we think, be without reasonable justification. It may safely be affirmed that he never had any such distinction in mind and never intended it to exist. There is nothing in the nature of the two cases calling for a difference in their treatment. They both alike called for precisely the same rule, and if there be language in the clause of proclamation from which an inference can be drawn favorable to the exemption, and none which precludes it, we are bound to hold that the exemption is given. We think the language of the proclamation does permit the inference and that there is none which precludes it."

The general principle of this case applies directly to the pending appeal. Suppose that after the victory of Manila Bay, another American fleet of equal force to Admiral Dewey's had conquered an exclusively naval force, its own superior, but of marked inferiority to the force which Admiral Dewey conquered. Would any court have given double the bounty for the lesser achievement? Where both overcame superior forces the court would have said: "There is nothing in the nature of the two cases calling for a difference in their treatment. They both alike called for precisely the same rule." And the language of the statute now under consideration gives ample authority for the inference that no distinction was intended.

The rewards given by a grateful country for a victory like that at Manila can not be rightly ruled by the same strictness of construction as a statute imposing a penalty. The purpose of Congress should be looked at broadly. It is a generous grant of the nation's bounty as a reward for gallant service and its interpretation must be in the line of its generous spirit.

In the case of *Silver* v. *Ladd*, 7 Wall. 219, this court held that under the donation act of September 27, 1850, a widow could take, although the words seemed to confine the benefit of the act to single men, married men and their wives, as

> "the act was passed for the purpose of rewarding in a liberal manner a meritorious class of persons who had taken possession of that country (Oregon) and held it for the United States, under circumstances of great danger and discouragement."

No Future Claims.

The law distributing prize money and bounty to the navy has been repealed by the act of March 3, 1899 (30 Stat. L. 997), and the cases arising out of the Spanish war are

the last to be adjudicated. We have already seen that, with the assent of the executive authorities and by decisions of the courts, the rule actually applied in the past has been to consider the land forces as a portion of the force constituting the measure of comparison. Admiral Farragut's reward was granted on this basis for the capture of New Orleans and Lieutenant Dewey participated in that reward under that rule of distribution. If a new rule, which never before received judicial approval until the decision of the Court of Claims in this case, is now substituted for the old, it will not apply to any future line of cases but simply to the battles of the Spanish War, chiefly to the action at Manila Bay. The statute itself is unchanged. It is not right that when this law has long been in force and subject to uniform interpretation, there should now, in its application to events occurring in the last year of its existence, be applied a new rule of construction, less favorable to the naval officers and men, its beneficiaries.

Equal Justice.

It is not possible to reconcile with a sense of justice, that under precisely the same law and in the same state of facts, Admiral Farragut and his men, in a litigated case, with the approval of the Navy Department, should have been given twice the measure of reward which this claimant and his men are to receive for the battle of Manila Bay. The equal justice of the law has long been its proudest dignity.

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No. 546.
Reply Brief of Herbert, McCook
for Appellant
Filed April 11, 1900.

Office Supreme Court U. S.
FILED
APR 11 1900
JAMES H. McKENNEY,

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BRIEF FOR APPELLANT IN REPLY.

Authority Cited For Defense.

The learned Assistant Attorney-General in the brief for the United States cites the case of *The Siren*, 13 Wall. 389, as authority for the view that the grant in this case is to be construed with great strictness, and that a construction carrying out the spirit of the statute can not be approved, unless there is no room for doubt as to its literal inclusion in the grant.

Distinction Between the Cases.

We would first point out, however, a very important distinction between this case and that of *The Siren*, or others of like import.

There no grant had taken effect. The question was: Should a vessel captured by a conjoint expedition be considered prize for distribution to the naval captors? The rule there applied was that the word "prize" in the statutes of the United States must be read in the sense understood in the English law, capture by maritime force alone. There was no question of a reward for special gallantry. The rule as to strict construction was stated by the court in the course of the argument.

Here the question presented is different. It is not in issue whether there is a grant of bounty. Vessels of war belonging to the enemy were in this case destroyed by vessels of war belonging to the United States. That fulfilled every condition necessary to establish the grant. That the present statute grants bounty in the engagement at Manila Bay is not, and has never been, in question. The sole question in the case is one of measuring the amount of bounty that shall be bestowed.

The distinct object of increasing the grant is to reward special gallantry in defeating a superior force, a generous purpose to be generously construed. Under these conditions the reasons given in *The Siren* and other cases for the strict construction of the grant must yield to the more prevailing reason which induced the doubling of the grant already made. If generally the overcoming of a superior force is to be considered the subject of a double reward, then that reward must be construed so as to effect this object. It is conceivable that the correct rule might require a strict construction in determining whether a public grant has actually been made, but when that grant, as in this case, is once clearly established, the courts may certainly recognize a liberal construction in determining the amount of the grant, where the increase is given for a particular and meritorious purpose.

It must be said also that the assertion of the rule of strict construction in that case was pure *obiter dictum;* it was quite unnecessary to the decision of the case.

Instances of Liberal Construction.

In spite of the rule laid down in *The Siren* case and the principle sometimes asserted that public grants are to be construed with great strictness, we find many cases which point out exceptions. It is submitted that this

grant is of an exceptional nature and should be ruled with liberality to carry out its object.

Endlich on the Interpretation of Statutes, § 109, after discussing remedial acts, states a recognized principle:

"Upon a similar principle, it would seem, it has been declared, that, where the object of a statute is to confer bounty, ambiguities in its provisions are to be construed liberally in favor of the intended beneficiaries."

Black, Interpretation of Laws, 320, announces the same rule:

"Where the object of an act of Congress or of a State legislature is to confer a bounty or reward, in consideration of meritorious services rendered to the State, or in aid of a deserving charity or for the compensation of public officers it should not be subjected to a restrictive interpretation. On the contrary, such a statute ought to be liberally construed, in furtherance of its beneficent purposes and policy, and any doubts or ambiguities arising upon its terms should be resolved in favor of its intended beneficiaries."

The cases cited fully sustain these views.

In *Ross* v. *Doe*, 1 Pet. 655, the court had before it the question of a donation of land, a grant from the public domain, and used in regard to it the following language (p. 667):

"The language of the second section of the act of Congress, authorizing these donation claims, is, that the persons who, on that day of the year 1797, when the Mississippi territory was finally evacuated by the Spanish troops, etc.

"This language is very peculiar, and shows plainly that, although Congress, at the time of passing the law, was certain of the fact of evacuation by the Spanish troops, that body was not informed of the precise time when the evacuation took place.

"The law was intended to confer a bounty on a numer-

ous class of individuals; and, in construing the ambiguous words of the section, it is the duty of the court to adopt that construction which will best effect the liberal intentions of the legislature.

"To interpret this section literally, that land should be granted to those who, on the same day of the year 1797, occupied a tract of land, provided the Spanish troops finally evacuated the territory, and on that very day of that very year 1797, would totally defeat the operation of the law, and the bounty intended by it, if it should have happened that the final evacuation of the territory, by the Spanish troops, took place on the first day of January, 1798, or on any subsequent day.

"If an individual had inhabited and cultivated a tract of land every day in the year 1797, still, according to the letter of this section, he was not entitled to the bounty of the government, because the Spanish troops had not evacuated the territory any day of that year, but some day of the next year; and, although the party continued to occupy the land until the day of the actual evacuation, still, he could not be entitled, according to the letter of the act, because that day was not any day of the year 1797.

"This could not be be the intention of Congress. The country had been settled during the conflict on the subject of boundaries, between Spain and the United States, by the citizens and subjects of both governments. It was a weak and exposed frontier of the United States. The manifest general intent of the act of Congress is to confer a bounty upon the inhabitants and cultivators of the soil, who elected to remain in the country at the time of the actual evacuation by the Spanish troops. In this view of the subject, the time of the actual evacuation was very important, but whether it was on some day in the year 1797 or 1798, was comparatively unimportant."

This was a case where a demand could readily have been made for a strict and literal construction, as it was a bounty from the public domain granted upon conditions expressed in the grant. A liberal rule was applied, not at all beyond the rule demanded in this case,—the pur-

pose being, as we insist should here be done, to effect the liberal intention of the legislature.

In *Walton* v. *Cotton*, 19 How. 355, the word "children" in a pension act was held to include grandchildren, and the court said (p. 358):

"The pension is undoubtedly a bounty of the government."

But in construing the application of the word "children" a liberal construction was adopted, the court saying as follows (p. 358):

"Congress, from high motives of policy, by granting pensions, alleviate, as far as they may, a class of men who suffered in the military service by the hardships they endured and the dangers they encountered. But to withold any arrearage of this bounty from his grandchildren, who had the misfortune to be left orphans, and give it to his living children, on his decease, would not seem to be a fit discrimination of national gratitude.

"Under the construction given by the department, if a male pensioner die, leaving no widow or children, but grandchildren, the pension can not be drawn from the Treasury. This would seem to stop short of carrying out the humane motive of Congress. They have not named grandchildren in the acts; but they are included in the equity of the statutes. And the argument that the pension is a gratuity, and was intended to be personal, will apply as well to grandchildren as to children.

"There can be no doubt that Congress had a right to distribute this bounty at their pleasure, and to declare it should not be liable to the debts of the beneficiaries. But they will be presumed to have acted under the ordinary influences which lead to an equitable and not a capricious result. And where the language used may be so construed as to carry out a benign policy, within the reasonable intent of Congress, it should be done."

In *Silver* v. *Ladd*, cited in our opening brief (p. 31), a grant to "single men, married men, and their wives"

was held to extend to widows in order to effect the purpose of the act, although this was one from the public domain.

In *United States* v. *Union Pacific R. R. Co.* 91 U. S. 72, the requirement was that this company should "pay said bonds at maturity," and the contention was that this implied the payment of the interest as it should accrue. The court considered the circumstances under which the law was passed (p. 88), and giving the act a liberal construction to enhance its object, decided that the purpose of the grant was to exact payment from the company of interest, only when the principal became due. Here was a case of a grant from the public treasury, and a liberal rule of construction was adopted.

To like effect is the recent case of *The Buena Ventura*, 175 U. S. 384, cited in our opening brief (p. 30). The claim for the release of the vessel was in derogation of the rights of the United States, and was based on a grant contained in the President's proclamation which gave away the public right to an alien enemy. This court held that the grant should be liberally construed so as to carry out its purpose and, in spite of its being a grant of a public right, a very broad construction was adopted.

In *Morse* v. *United States*, 3 Story, 87, 27 Fed. Cases, 1, the rule was laid down by Justice Story that where the words are loose and obscure, in a statute fixing the compensation of a public officer, the construction ought to be favorable to the claims of the officer. This was followed in *McKinstry* v. *United States*, 40 Fed. Rep. 818; *United States* v. *Collier*, 3 Blatchf. 333, 25 Fed. Cases, 527; *Moore* v. *United States*, 4 C. Cls. 141; *Butler* v. *United States*, 23 C. Cls. 165.

In the case of *The Matilda*, 1 Dod. 367, an American privateer captured by the British privateer *Lion* was retaken, near the close of her voyage, by the American

sloop *Argus*, and again, later on, recaptured by the British frigate *Revolutionaire*. She was condemned as prize to the *Revolutionaire*, and the question was, whether she had not so lost her military character by capture and recapture, as to extinguish the right to head money to the *Lion*.

"The court expressed its inclination to go as far as possible in support of the claim for head money under such circumstances, and accordingly decreed head money for 15 men due to the *Revolutionaire*, and for 80 men to the *Lion*, the prize having actually been brought home, notwithstanding intermediate hostile re-possession."

The question is not unlike that of salvage. In *The Beckford*, 3 C. Robinson, 356, Sir William Scott said:

"The principles on which this Court of Admiralty proceeds lead to a liberal remuneration in salvage cases, for they look not merely to the exact quantum of service performed in the case itself, but to the general interests of navigation and the commerce of the country.

"What enhances the pretensions of salvors most is the actual danger which they have incurred; the value of human life is that which is, and ought to be, principally considered in the preservation of other men's property, and if this is shown to have been hazarded it is most highly estimated."

Thus we see that, like all other statutory rules of strict and liberal construction, the rule that public grants are to be rigidly interpreted, is subject to the broad qualification that such grant must receive a reasonable construction and not be so construed as to defeat the intention of the legislature.

This case is a claim for bounty where the particular sum in dispute was given plainly as a reward for gallantry in overcoming a superior force. It is not just that a strict rule of construction should be adopted whereby the general intent of Congress should be sacrificed for the

sake of a construction whose only merit is a rigid adherence to a narrow meaning ascribed to the words of the statute.

A very sound rule of construction is that announced by Mr. Chief Justice Nott of the Court of Claims, in *Upton* v. *United States*, 19 C. Cls. 49:

"In this country, where statute law is the hurried work of over-busy individuals, very little importance can be attached to accidents of phraseology. Every year of judicial experience renders plainer the fact that judges to interpret aright must put themselves in the position of the legislators who made the statute, and gather from its general purposes the meaning of its obscurer parts."

Limited Effect of Siren Case.

It may indeed be said that the authority relied upon by the learned Justice Swayne in the *Siren* case for the rule of strict interpretation hardly sustains his dictum. In *The Elsebe*, 5 Rob. 155, the question was as to the power of the Crown to release property before adjudication, the captors objecting. The court says (p. 181):

"No man can have any interest but what he takes as the mere gift of the Crown."

And on p. 183:

"The crown which declares hostilities can limit their operations; it can except individuals; it grants particular passes, it exempts particular classes of the enemies' ships."

While all this is admitted law, it can have no bearing on this case nor can it sustain the rule so broadly announced in the case of *The Siren*, at least so far as it may be sought to apply it here. We contend that the question presented by this case, namely, the meaning to be given to "force" of a vessel, where there is no question but that the right

to bounty exists, and the question presented by the case of *The Siren*, whether under the conditions of the capture, the vessel taken was, within the meaning of the word, a prize at all, are so different that laying down the rule of strict construction in that case, has no application whatever to the question presented here.

The case of *The Siren*, instead of establishing the rule here contended for by the defense, that shore batteries actually present and participating, are not to be counted, establishes just the reverse. The land forces were counted in that case, and it was because they had to be counted that the navy could have no prize. The court said:

"The two forces were acting under the order of a common government, for a common object, and for none other. They were united in their labors and their perils, and in their triumph they were not divided. They were converging streams toiling against the same dike. When it gave way both swept in without any further obstruction. The consummation of their work was the fall of the city. Either force, after the abandonment of their defenses by the rebels, could have seized all that was taken by both."

Could the rule here sought to be established have been invoked in the case of *The Siren*, and the shore forces actually present been excluded from all consideration, no question could have arisen as to the capture being a maritime one, and the right of the navy to share in it.

The only grant of prize is to the navy for captures by the navy. Here the capture was not by the navy; it was by a conjoint expedition. Thus the condition of the grant, capture by the navy, never occurred. But in the present case, where the reason is just the reverse, and there is no question as to any one except the beneficiaries under the act having destroyed these vessels and being entitled to share, you can hardly invoke a rule of strict construction based, as in *The Siren*

case, upon the English definition of prize, which was never meant to be a reward at all for conduct in action.

Neither here nor in England, was there ever a case holding that anything but substantial assistance from the army deprived the navy of the right to prize, and in *The Rebekah*, 1 Rob. 229, the prize was adjudicated to the captors as a naval capture, although some of the naval force used guns from a naval station on shore. There has never been a case where there was present a force actually contributing to the capture of a prize or the destruction of a vessel, or aiding and protecting a prize from capture or vessel from destruction and that force was not considered, even if its consideration as in the case of *The Siren* debarred prize altogether.

For What Purposes are Shore Defenses Counted?

The brief of the Attorney-General states:

"What good reason is there, after reading the forts and land batteries into the force of the enemy's vessels, for leaving them out when it comes to a distribution of prize money? Once having got them into the engagement as part of the naval force of the enemy, why should they not remain to be distributed as prize, or increase the amount of the bounty?"

The statute fixes definitely the basis of computing bounty. It is to be the number of persons aboard the vessel of war destroyed at the commencement of the engagement. In view of this we claimed, for the purpose of computing bounty, neither the men ashore nor those on the vessels captured; yet the court below held the captured vessels to be a part of the force of the enemy's vessels destroyed. When it comes to the comparison of forces, Congress has used a term broad enough to include every fighting force available to aid and protect the ships

throughout the engagement. Claim of the men ashore manning the guns as part of the force is inferred from claiming the guns. The guns would be useless without the men to man them, as much so as without projectiles; yet it is their active participation in the engagement that is made the basis for our claiming them as a part of the force possessed by the vessels for offense and defense.

Our learned adversary does not seem to recall that the English law of prize extended to captures on land by naval forces, and although this was repealed in this country by the act of July 17, 1862, 12 Stat. L. 606 (*Mrs. Alexander's Cotton*, 2 Wall. 421, 422), yet it is a disputed question now under judicial consideration whether the English rule was not re-enacted here by the act of June 30, 1864, § 33, 13 Stat. L. 315.

Bounty, How Calculated.

There are two factors determining the amount of bounty. The entire relative force, men, guns, vessels and fortifications, determines the ratio, $100 or $200. This is the multiplier. The other factor, the multiplicand, is the number of men on the vessels destroyed. The two factors are made up on entirely different bases.

The application of this subject is treated on page 20 of appellant's brief.

CONCLUSION.

It is admitted in the brief for the appellees (p. 3) that the force of the convoying men of war is the force of the prize.

"Nor is there any strained conclusion in construing the force of an unarmed prize to include the force of her convoy. The prize and the convoy combined constitute one naval force of which each vessel is a part. Hence the force of each is the force of every other vessel of the fleet."

This can only be because the prize is possessed of this force at the time of the capture. Where are the words in the statute that draw the line between such a force and the force of shore batteries likewise co-operating at the time of the capture? Is not one as much within the statute as the other?

The Attorney-General we think has thus been forced to concede the logic of our position.

The intent of the act, entirely consistent with the words used, requires the construction claimed, the nature of the victory demands it, judicial decision has never heretofore refused it. The judgment of the court below should be reversed.

We most respectfully ask for an early decision.

H. A. HERBERT,
BENJ. MICOU,
For Appellant.

WILLIAM B. KING,
For various Officers and Men.

ADDENDUM.

We call attention especially to this statement:

No English decisions and no American decisions can throw any light upon the precise point here at issue, namely, the measurement of the quantum of bounty.

This is so in England, because no law in England ever made any difference in the amount of bounty; and in America the question was never raised in this court.

The Court of Claims has therefore, by finding that the claimant is entitled to bounty, conducted us to the point where precedents can no longer throw light upon the question being considered, excepting, of course, the actual administrative decisions which are in our favor.

The question therefore before this court, as to the quantum of bounty, is to be decided entirely upon the provisions of the statute, according to its spirit, intent, and the analogies we have cited. There seems to be absolutely no case in which a statute giving so beneficent a reward as one for gallantry in maintaining the rights of one's country in battle, has ever received anything less than the most liberal construction.

We respectfully ask an early decision of this case, that Congress may appropriate for officers and men according to such decision as the court shall render.

In the Supreme Court of the United States.

GEORGE DEWEY, APPELLANT,
v.
THE UNITED STATES.
No. 546.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

The sole question raised by this appeal is upon the construction of a few words of the statute upon which is based the distinguished claimant's right to bounty for the destruction of the vessels of the enemy at the battle of Manila Bay on May 1, 1898. The pertinent part of that statute is:

> A bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement, which is sunk or otherwise destroyed in such engagement, by any ship or vessel belonging to the United States or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars, if the enemy's vessel was of inferior force and of two hundred

dollars, if of equal or superior force, to be divided among the officers and crew in the same manner as prize money. (Section 4635, R. S.)

The claimant contends that the various forts and land batteries, together with the torpedoes and submarine mines in the bay and at the entrance, which supported the enemy's vessels during the engagement, should be taken into consideration in determining the force of those vessels. But the Court of Claims held that the force contemplated by the statute was "such force only as is necessarily incident to the men employed upon the vessel, and to the force of the vessel arising from its construction, its armament, equipment, and development as an instrument of war." And that the terms of the statute preclude from the consideration of the force of the enemy's vessel "the environment of power which may surround it but form no necessary part nor portion of it."

As the court found that the force of the enemy's vessels, thus considered, was inferior to that of the American vessels, but that the force of the enemy reckoned according to the claimant's contention was superior to ours, the bounty awarded by the court pursuant to its construction of the statute was but half the amount claimed—and hence this appeal.

It is clear that the natural and ordinary meaning of the words "if the enemy's vessel was of inferior, * * * if of equal or superior force" is naval or maritime force. Certainly there is no suggestion to the mind of *land* force of any sort from the use of the

term force of a *vessel*. Appellant's counsel argue that it is equally remote to extend the word "vessel" to include "vessels," but there is no foundation for this attempt at *reductio ad absurdum*. To say nothing of the familiar rule that in the construction of statutes words expressed in the singular may be extended so as to include the plural, it is too manifest to admit of serious discussion that the statute is intended to apply to engagements between several vessels as well as to naval duels. Nor is there any strained conclusion in construing the force of an unarmed prize to include the force of her convoy. The prize and the convoy combined constitute one naval force of which each vessel is a part. Hence the force of each is the force of every other vessel of the fleet.

But the attempt on behalf of the appellant to read into the phrase "force of a vessel" forts and land batteries and submarine harbor defenses, which for the time being join with it in its engagement with another vessel, can only be accomplished by a forced and most liberal construction of the term. Yet the rule applied to prize statutes (and, of course, to the kindred statutes relating to bounty) is that of the strictest construction.

> Prize was wholly the creature of the Crown. No one could have any interest but what he took as the gift of the King. Beyond this he could claim nothing. The reasons upon which the rule was founded were that right of making war and peace was exclusively in the sovereign; that the acquisitions of war must, therefore, belong to him, and that their disposal might be of the utmost importance for the purposes both of war and peace. It was held that

it must be presumed from these considerations that the Government did not intend to divest itself of this important attribute, except in so far as such a purpose was clearly and unequivocally expressed. The right is not the private property of the sovereign, but a trust confided to him for the public good. In private grants the construction is most strongly against the grantor. In all concessions touching capture the opposite rule prevails. A presumption arises against the grant, and it can only be rebutted by language so explicit as to leave no room for doubt upon the subject. * * * The United States have succeeded to the rights of the Crown. No one can have any right or interest in any prize except by their grant or permission. All captures made without their express authority inure *ipso facto* to their benefit. Whenever a claim is set up its sanction by an act of Congress must be shown. If no such act can be produced, the alleged right does not exist. (*The Siren*, 13 Wall., 392–3.)

All prizes made by our ships of war belong primarily to the United States, and any person who claims to participate therein must show a grant from the Government. (*The Cherokee*, 5 Fed. Cas., 551.)

The case of *The Siren*, *supra*, may, indeed, be looked to as fairly decisive of the present case.

The Siren was captured by combined naval and land forces of the United States, and was claimed as prize. The decision of the prize court denying the claim was affirmed by this court, on the ground that no provision is found in any of the statutes of the United States on the subject of prize, touching joint captures by the Army and Navy. (The statute of 1864, under which the claim

was made, is identical with the present statute, sec. 4630—R. S.) And the court cites, as the rule governing the case, Lord Stowell's definition of the word "prize:" "It evidently means maritime captures effected by maritime force only—ships and cargoes taken by ships."

Thus, by strict construction of the statute, this court holds that naval forces which are aided by land forces must be wholly excluded from consideration upon a claim for the fruits of a victory over naval forces. And yet the claimant would have the same court hold that the force so denied consideration when *victorious* shall, when *vanquished*, be wholly taken into account in determining the same question of prize bounty; and this, too, by the exercise of the widest liberality of construction of practically the same statute! And the only argument advanced in support of this contention is that the intent of the prize and bounty laws is "to encourage personal gallantry, enterprize, and perseverence." But here again we may look to the decisions of this court for answer. In *Porter* v. *United States* (106 U. S., 611) the claimant's demand for prize was denied, on the authority of *The Siren*, in the following words:

> Prize money, or bounty in lieu of it, is not allowed by the laws of Congress where vessels of the enemy are captured or destroyed by the Navy with the cooperation of the Army. To win either, the Navy must achieve its success without the direct aid of the Army, by maritime force only. No pecuniary reward is conferred for anything taken or destroyed by the Navy when it acts in conjunction with the Army in the capture of a fortified position of the enemy, *though the meritorious services and gallant*

conduct of its officers and men may justly entitle them to honorable mention in the history of the country.

The illustrations which counsel for appellant give to show the alleged absurd consequences of the construction given to this statute by the Court of Claims establish no such conclusion, but simply that the statute does not provide for every contingency, and that hence inequality and hardship must result in certain instances. But none of these illustrations equal in hardship the cases governed by the rule of construction announced in *The Siren*. Under that rule, if a naval force should engage and capture or destroy a fleet of the enemy of twice its strength, it could be awarded neither prize nor bounty if it were assisted during that engagement by but one gun of a land force. And what fairness is there in giving to the victors in an equal naval combat the same reward as though the victorious force were but half that of the enemy, or why should the reward where the victorious fleet is represented by 101 and the enemy's fleet by 100, be but half what it would be if each were 100?

Whether or not Congress should or could have enacted a law which would give due effect to every thing and circumstance which went to make up effectiveness, or to affect the strength of the forces engaged, it is certain that Congress did not undertake to do anything of the kind. It undertook to provide for certain specific conditions, without any regard to the existence of other conditions, although the latter might have a very important bearing on the results of a naval engagement. Doubtless Congress realized that an ideal bounty law, operating

with absolute justice and harmony in all cases, was impossible, and hence it established fairly reasonable limits to the operation of the statute, without regard to whether these limits might not unreasonably have been somewhat different.

EFFECTIVENESS OF SHORE DEFENSES, TORPEDOES AND SUBMARINE MINES.

I have no desire to question nor discuss the authorities cited by appellant's counsel to the effect that in encounters between naval forces and land batteries the advantage is immensely in favor of the latter, and that torpedoes and submarine mines are most formidable and deadly. By the facts thus established the appellant's counsel proves too much. For they do not have the boldness to contend that prize or bounty can be awarded for the capture or destruction of land batteries, and yet, according to their own showing, it is therein that a naval force would evince the highest degree of skill and gallantry. And this leads to the suggestion that counsel have scarcely the courage of their convictions on this score. What good reason is there, after reading the forts and land batteries into the "force of the enemy's vessels," for leaving them out when it comes to the distribution of prize or bounty? Once having got them into the engagement as a part of the naval force of the enemy, why should they not remain to be distributed as prize, or to increase the amount of the bounty?

AUTHORITIES ON LIBERAL CONSTRUCTION.

In view of what seems to be the undoubted rule governing this case, that the statute under consideration must be strictly construed, the decisions cited to fortify the contention made by appellant's counsel for a liberal construction of the statute seem to be irrelevant and I shall not discuss them.

PRECEDENTS AND ACQUIESCENCE.

Appellant's counsel contend that the decision of the court below substitutes a new rule of construction for an old one, because, they say, double bounty was allowed in the Farragut case. The court below has pointed out that the double bounty was allowed in that case because the arbitrators found, *as a fact*, that the enemy's force was superior. Apparently this finding was due to the arbitrators, taking that view of the law for which the appellant now contends; but the district court had held the parties bound by the action of the arbitrators, and the appeal as ultimately heard did not touch that action in regard to this particular matter. So far from there being any rule, then, requiring the word "force" in section 4635 to be construed as including land batteries, there was merely the action of a board of arbitrators, in a single instance, unsupported by judicial authority. Such action can not possibly have any weight comparable to that of a rule of law. Nor does there seem to have been that degree of acquiescence in a positive and well-defined interpretation of the statute as should operate to estop the defense here made.

There can be no doubt that, taken by themselves, the words, "if the enemy's vessel was of inferior force, * * * if of equal or superior force," do not relate to other than naval force, and also that there is nothing in section 4635 itself to suggest that any other than a naval force was in contemplation. Is there, under these circumstances, any evidence that Congress intended to include land forces cooperating with a naval force?

When the first prize and bounty laws were passed an engagement between fleets in a harbor where one fleet was supported by land batteries was an extremely rare occurrence. Owing to the comparatively short range of the guns of that day, a vessel could approach much nearer the shore without being exposed to the fire of land batteries than could now be done. To be exposed to such fire, moreover, was peculiarly dangerous, as the proximity of the shore necessarily hampered very much the freedom of movement of sailing vessels. To such causes as these may be traced the fact that at that time naval engagements occurred, as a rule, at some distance from shore, and scarcely ever within the range of land batteries. Under these circumstances it is very probable that when the act of April 23, 1800 (2 Stats., 45), was passed the very remote contingency of a naval engagement within the range of land batteries was not thought of at all. Had it been thought of and had Congress intended that the enemy's land force should be considered in estimating bounty in such a case, it is practically certain that appropriate words would have been used to definitely express

such an intention. And these words would readily suggest themselves. It was only necessary to substitute "enemy's force engaged" for the words actually employed. They were not used, however, and as it does not appear that such an intention existed, no such words can now be read into the statute.

The words of the act of 1800 are "any ship of an enemy * * * which shall be sunk or destroyed by any ship or vessel of the United States of equal or inferior force." It is perfectly certain that the "force" of the "ship or vessel of the United States" means naval force only (*The Siren*, 13 Wall., 395); and this being so, it is equally certain that that statute did not take into consideration any other kind of "force" in regard to a "ship of an enemy." From the time of the first American statute on this subject, therefore, the word "force" must have had the meaning of "naval force" exclusively.

Subsequently other statutes were passed, including the one now in consideration, which practically dates from 1862. The conditions of naval warfare had changed somewhat, though less change had occurred as regards offensive and defensive armament between 1800 and the enactment of the Revised Statutes than since those statutes were adopted. Except in regard to the amount of the bounty, the language of section 4635 does not materially differ from that of section 7 of the act of April 23, 1800, and certainly there is nothing whatever to show any intention that the word "force," which, as has been seen, must, in the act of 1800, have referred to naval force alone, was to receive a new meaning, viz, any force,

of any character whatever, belonging to or cooperating with the enemy's vessel. The word "force," having originally been so used as to refer to naval force exclusively, had practically acquired a technical meaning, and it would have needed some special and very definite language to show an intention to use it in any new or extended meaning. No such language can be found, and the conclusion must be that Congress, whether through inadvertence or of set purpose, had no intention to take into account any land forces cooperating with the force of the enemy's vessel.

Appellant's counsel contend that the great increase in the rate of bounty, made by the act of 1862 over the rates fixed by the earlier acts, must have been due to the fact that the use of torpedoes had increased the risks of naval warfare, and hence that the word "force" must have been intended to include all land forces which aided the enemy's vessels. It is probable that the increase in the size and effectiveness of the guns used in 1862 over those used in 1800, and the use of steam, which made it easier for an enemy's vessel to escape, and thus rendered her destruction more difficult, had more to do with the increase in the bounty than had the mere fact that torpedoes had come to be used, as the rate of bounty is the same whether torpedoes are used or not. Conceding, however, that Congress had torpedoes especially in mind, the conclusion of appellant's counsel does not follow. The torpedo is primarily an engine of naval warfare. It is carried on vessels of war, and may be discharged directly from them by tubes specially made for this purpose. Certain types

of vessels are known as torpedo boats, or torpedo-boat destroyers, and are armed mainly with torpedoes. Torpedoes used by vessels are as much a part of their force as are the guns which they use, and should be taken into account in estimating comparative force. Stationary torpedoes or mines, planted by a naval force and exploded either by concussion or by electric wires extending and operated from vessels, might also be properly taken into account. On the other hand, mines used as land defenses, planted by a land force, and operated from the shore by electric connection, are as properly a part of the land force as are the guns in the batteries. The mere existence of torpedoes, like the existence of improved cannon, is no reason for giving the word "force" in section 4635 any other than a naval signification. If used by vessels as a means of naval warfare, they constitute a part of the naval force, while if used by land forces they constitute a part of the land force, precisely as in the case of all other engines of war. Hence the fact that torpedoes, or even mines, should, under section 4635, be taken into account when used by a naval force is no reason for taking them into account when used by a land force, nor is it any reason for taking land batteries into account.

THE INTENT OF THE STATUTE.

Counsel for appellant very naturally dwell upon the heroic features of the battle of Manila Bay; and here it may be said that if the measure of the bounty claimed in this action were simply the degree of skill and daring and heroic achievement displayed by the claimant and the

forces under his command in that memorable engagement, there would be an end of controversy.

But it will not do to let the glamour of that splendid story blind our eyes to the purely legal proposition which is here presented. Whilst it is undoubtedly true that the naval prize and bounty laws are intended to encourage "personal gallantry, enterprise, and perseverance," nevertheless these elements do not and can not enter into the determination of the amount of prize or bounty to be awarded, pursuant to statute, to the victors in a naval combat. The relative strength of the opposing forces alone determines the question. And so proof of the highest qualities of skill and heroism can of itself avail nothing on such a claim as this. *The terms of the statute* must be complied with else the claim must fail. Against the argument that the spirit of the law has been fulfilled on proof of great skill and gallantry is the fact that Congress has refrained from providing a reward for various instances of the display of these qualities.

As has been shown, there is no provision for the capture or destruction of the enemy's vessels by combined forces of the Army and Navy. Nothing can be claimed for the capture or destruction of land batteries or forces by a naval force, and there is absolutely no reward in the nature of prize or bounty provided by law for the most heroic victories in military battles.

The Court of Claims seem to have adopted the only safe rule of guidance in determining this claim, and it is difficult to perceive how a different conclusion could have been reached by them save by yielding to the

spirit of grateful generosity which is bound to exert its influence in the consideration of this claim, whether we will or no.

LOUIS A. PRADT,
Assistant Attorney-General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1899.

GEORGE DEWEY, APPELLANT,
v.
THE UNITED STATES. } No. 546.

APPEAL FROM THE COURT OF CLAIMS.

ADDITIONAL BRIEF FOR THE UNITED STATES.

The contention made by counsel for the appellant in their reply brief, that the case of *The Siren* (13 Wall., 389), relied upon herein in the brief for the United States, is not applicable to the facts in this case, and that, at all events, the rule therein laid down is *obiter dictum*, seems to warrant further reference to that case.

The Siren was captured by the United States vessel of war *Gladiolus*. She received no direct nor immediate aid from the land forces of the United States in making this capture, but the presence and proximity of those forces did practically contribute to the capture. The question presented upon this state of facts was, whether

The Siren could be considered prize, and the determination of this question rested upon the construction of the statute upon which the claim of prize was based. That statute awarded prize to the vessel or vessels making the capture, and it is clear that if this court had adopted the rule of liberal construction which is here invoked, it might very reasonably have allowed the claim, for the *Gladiolus* certainly captured *The Siren;* and although this capture was effected with the aid of the land forces, there were no express words of the statute denying an award of prize under such circumstances. Yet this court adopted and applied to the case the rule of strict construction of prize statutes laid down by eminent English authority. It is difficult to understand how this assertion of that rule was, as claimed by counsel for appellant, "pure *obiter dictum*." Surely it was necessary to construe the statute, and in so doing, it was equally necessary to announce the rule for such construction; hence the rule became, it would seem, an essential part of the decision. A similar rule of action was announced in the very carefully considered case of the *Cherokee* (5th Fed. Cases), on page 551, 552.

> It must be borne in mind that we are not discussing a question of general jurisprudence, or endeavoring to ascertain a rule of the unwritten law to be determined by judicial precedents or considerations of justice and policy, but we are endeavoring to ascertain the true meaning and intent of a positive legislative enactment.

We find, too, in this same case, a very appropriate characterization of the rule of construction asked for by

appellant in this case. On page 555 the court, in discussing the English decisions in favor of constructive joint capture, criticises the same as follows:

> We look in vain, not only for the terms of any act of Parliament, but for any remark which indicates that any such act existed. The claims of captors are discussed, not as resting upon express grant, but as if they were questions of common law, depending merely upon previous decisions and general considerations of justice and policy.

And further:

> Thus it appears that a constructive captor comes in by the indulgence of the court and not by the natural construction of the statute grant. In reading many of the decisions it is evident that the courts, following their own views of policy or expediency, have indulged in a latitude of construction, which has carried them out of sight of the test which they were supposed to be expounding. That the decisions had gone beyond the just interpretation of the terms of the grant is not unfrequently admitted by the courts themselves.

But counsel insist that in *The Siren* the inquiry was, whether there was a grant of prize, while in this case the grant is conceded and the sole question is of the amount of the bounty thus granted. But practically this distinction does not exist, for here it is the grant of the lesser bounty only that is conceded, and the real question is, whether there is a grant of double bounty. This question must be determined, as in *The Siren*, by construing the statute upon which it is claimed the grant is based; and, viewing it thus, it certainly seems reasonable to

argue that the same rule of strict construction should be applied here as was applied in the case of *The Siren*.

It may properly be added that I am not urging this court, as an original proposition, to apply the rule of strict construction to prize and bounty statutes. I am simply pointing to the fact, as I understand it, that the court has already declared that such is the rule of interpretation of these statutes.

CAPTURES ON LAND BY NAVAL FORCES.

Appellant's counsel make the assertion, for which I know no warrant, that the English *law of prize* extended to captures on land by naval forces. The case of *Mrs. Alexander's Cotton* (2 Wall., 421,) holds directly to the contrary. Nor is that case authority for the further statement of counsel for appellant, that "this was repealed in this country by the act of July 17, 1862 (12 Stat. L., 606)," for there never was any such law in this country to be repealed.

FORCE OF PRIZE.

The statement heretofore made in the brief for the United States in this case regarding the force of an unarmed prize is construed as a concession of the "logic of their position" by claimant's counsel; but this scarcely follows. To state that the vessels of a fleet which includes an unarmed prize constitute one naval force pertaining to the prize as well as to every other vessel of the fleet, is hardly an admission that a *land fort* may also be considered as a part of the same force. There is abundant

authority for treating a fleet as one naval force. This doctrine of association of vessels has been summed up by Lord Stowell in the phrase that, in such cases privity of purpose creates community of interest. (*The Selma*, 21 Fed. Ca., 1046.)

In the case of *The Atlanta* (3 Wall., 425,) the monitor *Nahant* was included with the *Weehawken* as part of the naval force of the United States, although the *Weehawken* engaged the *Atlanta* and compelled her to surrender before the *Nahant* could get into action or had fired a gun.

INTENT OF THE STATUTE.

I desire to add to what I have already said on the above subject that, although the intent of our prize and bounty laws may be to *encourage* personal gallantry, yet prize and bounty are not necessarily bestowed as a reward for the exercise of those qualities. The case of the *Atlanta*, above cited, is a striking exemplification of this fact. The crew of the *Nahant* were held entitled to share in the award of prize in that case, although the engagement was over before they had had an opportunity to display in the slightest the gallantry which they undoubtedly possessed.

And see *La Clarinde* (1 Dods., 436).

LOUIS A. PRADT,
Assistant Attorney-General.

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DEWEY *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 546. Argued April 10, 1900.—Decided May 28, 1900.

In this case it was rightly decided in the court below, that in determining under the provisions of Rev. Stat. sec. 902, whether the Spanish vessels sunk or destroyed at Manila were of inferior or superior force to the American vessels engaged in that battle, the land batteries, mines and torpedoes, not controlled by those in charge of the Spanish vessels, but which supported those vessels, were to be excluded altogether from consideration, and that the size and armaments of the vessels sunk or destroyed, together with the number of men upon them, were alone to be regarded in determining the amount of the bounty to be awarded.

THE case is stated in the opinion of the court.

Mr. H. A. Herbert and *Mr. Benjamin Micou* for appellant and others.

Mr. William B. King for other officers and men.

Mr. Assistant Attorney General Pradt for the United States.

MR. JUSTICE HARLAN delivered the opinion of the court.

This was an action in the Court of Claims to recover bounty money earned by the plaintiff in error as the commanding officer of the American fleet at the naval battle of Manila on the 1st day of May, 1898.

The statute under which the action was brought is as follows: "Rev. Stat. § 4635. A bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement, which is sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States, or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars, if the enemy's vessel was of inferior force, and of two hundred dollars if of equal or superior force, to be divided among the officers and crew in the same manner as prize money; and when the actual number of men on board any such vessel cannot be satisfactorily ascertained, it shall be estimated according to the complement allowed to vessels of its class in the navy of the United States; and there shall be paid as bounty to the captors of any vessel of war captured from an enemy, which they may be instructed to destroy, or which is immediately destroyed for the public interest, but not in consequence of injuries received in action, fifty dollars for every person who shall be on board at the time of such capture."

The mode in which bounty money earned under that section was to be divided is indicated by the following provisions relating to the distribution of prize money:

"§ 4631. All prize money adjudged to the captors shall be distributed in the following proportions:

"First. To the commanding officer of a fleet or squadron, one twentieth part of all prize-money awarded to any vessel or vessels under his immediate command.

"Second. To the commanding officer of a division of a fleet or squadron, on duty under the orders of the commander-in-chief of such fleet or squadron, a sum equal to one fiftieth part of any prize-money awarded to a vessel of such division for a capture made while under his command, such fiftieth part to be deducted from the moiety due to the United States, if there be such moiety, otherwise from the amount awarded to the captors; but such fiftieth part shall not be in addition to any share which may be due to the commander of the division, and which he may elect to receive, as commander of a single ship making or assisting in the capture.

"Third. To the fleet-captain, one-hundredth part of all prize-money awarded to any vessel or vessels of the fleet or squadron in which he is serving, except in a case where the capture is made by the vessel on board of which he is serving at the time of such capture; and in such case he shall share, in proportion to his pay, with the other officers and men on board such vessel.

"Fourth. To the commander of a single vessel, one tenth part of all the prize-money awarded to the vessel under his command, if such vessel at the time of the capture was under the command of the commanding officer of a fleet or squadron, or a division, and three twentieths if his vessel was acting independently of such superior officer.

"Fifth. After the foregoing deductions, the residue shall be distributed and proportioned among all others doing duty on board, including the fleet-captain, and borne upon the books of the ship, in proportion to their respective rates of pay in the service."

It may be here stated that the provisions for prize-money and bounty to the navy were repealed by an act of Congress approved March 3, 1899, which declares that "all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy hereafter occurring in time of war, are hereby repealed." 30 Stat. 1004, 1007, c. 413, § 13.

The American vessels taking part in the battle were the Olympia, Baltimore, Boston, Raleigh, Concord, Petrel, McCulloch, Nanshan and Zafiro.

The number of officers and men on those vessels during the battle was 1836.

The Spanish vessels taking part in the battle were the Reina Cristina, Castilla, Don Juan de Austria, Don Antonio de Ulloa, General Lezo, Marquez del Duero, Argos, Velasco, Isla de Mindanao, Isla de Cuba, Isla de Luzon, Manila, and two torpedo boats. The Reina Cristina, Castilla, Don Antonio de Ulloa, General Lezo, Marquez del Duero, Argos, Velasco, Isla de Mindanao and the two torpedo boats were destroyed by the American vessels. The Don Juan de Austria, Isla de Cuba and Isla de Luzon were disabled and put out of action in the battle, and were captured; but they were subsequently floated and repaired by the United States and now constitute a part of the American navy. The Manila was captured in the same engagement.

No claim for bounty under section 4635 is made in the present action on account of the sinking of the Don Juan de Austria, Isla de Cuba and the Isla de Luzon, because proceedings are to be begun in the Supreme Court of the District of Columbia to condemn those vessels as prize of war, the claimant reserving the right to make such claim hereafter, if it should be held that the vessels are not subject to condemnation in prize.

The total number of men on board the Spanish vessels during the battle of Manila was 2973. The total number on board the Spanish vessels destroyed was, at the commencement of the action, 1914.

The enemy's vessels were supported by land batteries and by mines and torpedoes in the entrance to Manila Bay and in the bay itself, and some of those in the bay exploded during the action.

It was found as a fact by the Court of Claims — and this court must assume it to be true — that taking into consideration the guns at Corregidor, El Fraile and other forts at the entrance of the bay and those at Manila and Cavite, and the torpedoes and mines in the bay and the entrance to it, the enemy's force was superior to the force of the vessels of the United

States; but that excluding shore batteries and submarine defences, the American vessels and armaments were superior in force to the Spanish vessels.

The court below — all its members concurring — was of opinion that the land batteries, mines and torpedoes that supported the Spanish vessels during the naval engagement in Manila Bay should be excluded from consideration, and that the claim of the plaintiff came within the clause of the statute allowing the sum of one hundred dollars for each person on board of the vessels sunk or destroyed "if the enemy's vessel was of inferior force," and not within the clause allowing the sum of two hundred dollars, "if [the enemy's vessel was] of equal or superior force." Judgment was accordingly entered against the United States for the sum of $9570, upon the basis of one hundred dollars for each person on board, at the commencement of the engagement, of the enemy's vessels sunk or destroyed.

The counsel have called our attention to several cases in this and other courts. Do any of those cases constitute a direct adjudication of the question now before us?

In *The Ironclad Atlanta*, 3 Wall. 425, 432, the question was whether a certain American vessel, the Nahant, was to be regarded as one of the capturing vessels in a naval engagement in Wassau Sound, Georgia, in 1863. The court said: "The importance of the point is this: the Weehawken was confessedly inferior in force to the Atlanta, and if she is alone to be regarded in the comparison of forces, the whole prize-money goes to the captors. On the other hand, the combined force of the two monitors was superior to that of the Atlanta, and if both are to be regarded as capturing vessels, only one half of the prize-money goes to the captors, and the decree must be affirmed. The mere fact that the only shot fired and the only damage done was by the Weehawken is not decisive. Other circumstances must be taken into account in determining the matter — such as the force, position, conduct and intention of the Nahant. The two vessels were known to be under the same command, and of nearly equal force. The Atlanta descended the sound to attack both, and governed herself with reference to their combined action. It is not reasonable to suppose that

her course would have been the one pursued, had she had only the Weehawken to encounter. Besides, the fire of the Atlanta was directed entirely to the Nahant, and of course diverted from her consort. It is possible that a different result might have followed had the fire been turned upon the Weehawken. This diversion must be considered in every just sense of the terms as giving aid to her. Again, the power of the shot of the Weehawken had evidently surprised the officers of the Atlanta, who found their vessel speedily disabled and their crew demoralized. The advance upon her, at full speed, of a second monitor, of equal force, ready to inflict similar injuries, may have hastened the surrender. It can hardly be supposed that the approach of the second monitor did not enter into the consideration of the captain and officers of the Atlanta. If the shot from the guns of one of the monitors could, in a few moments, penetrate the casemate of the Atlanta, crush in the bar of her pilot-house, and prostrate between forty and fifty of her men, her captain might well conclude that the combined fire of both would speedily sink his vessel and destroy his entire crew. It cannot be affirmed, nor is it reasonable to suppose, that any of the incidents of the battle would have occurred as they did if the Nahant had not been present in the action."

Another case referred to is that of *The Siren*, 13 Wall. 389, 395. That was a case in prize arising out of certain captures near Charleston, South Carolina, in 1865, of rebel vessels during the late civil war, as the result of the joint action of the land and naval forces of the United States. This court, affirming the judgment of the District Court for the District of Massachusetts, held that Congress had made no provision in reference to joint captures by the army and navy, and that such captures enured exclusively to the benefit of the United States. The court said: "We have already adverted to the ingress of the navy into the harbor of Charleston on the morning of the 17th day of February. At nine o'clock that morning an officer of the land forces hoisted the national flag over the ruins of Fort Sumpter. Flags were also raised over Forts Ripley and Pinckney. At ten o'clock a military officer reached Charleston. The mayor surrendered the city to him. Four hundred and

fifty pieces of artillery, military stores, and much other property were captured with it. Contemporaneously with these things was the seizure of the Siren by the Gladiolus, and the approach and arrival of the rest of the fleet. The two forces were acting under the orders of a common government, for a common object, and for none other. They were united in their labors and their perils, and in their triumph they were not divided. They were converging streams toiling against the same dike. When it gave way both swept in without further obstruction. The consummation of their work was the fall of the city. Either force, after the abandonment of their defences by the rebels, could have seized all that was taken by both. The meritorious service of the Gladiolus was as a salvor, and not as a captor. Precedence in the time of the arrival of the respective forces is an element of no consequence. Upon principle, reason and authority, we think the judgment of the District Court was correctly given."

The case chiefly relied upon by the plaintiff is *United States* v. *Farragut*, 22 Wall. 406. The question now presented might perhaps have been determined under the pleadings in that case, if it had not been withdrawn from consideration before this court rendered its judgment. Admiral Farragut and others of the American navy filed a libel in admiralty in the Supreme Court of the District of Columbia on account of certain prizes taken below New Orleans in April, 1862. The plaintiff and the Government referred the cause to the determination and award of certain persons, whose award was to be final upon all questions of law and facts involved — the award to be entered as a rule and decree of court in the case, with the right also of either party to appeal to this court as from other decrees or judgments in prize cases. The arbitrators made an award, holding among other things that certain captures were not a conjoint operation of the army and navy of the United States. Exceptions were filed to the award, as erroneous in point both of law and fact. The exceptions were overruled and a decree was entered for the claimants. After the case came to this court the Attorney General, according to the report of the case, dismissed the appeal as to certain property covering $613,520 of the aggregate

sum allowed by the decree, and that sum was distributed among the captors. That part of the case, it is stated, raised the very question now presented, and it is contended that the action of the Attorney General should be regarded as indicating the interpretation placed upon the statute by the Executive Department. We cannot accept this view. It does not appear from the report of the case what reasons induced the Attorney General to dismiss the appeal of the Government as to the matters referred to. It may have been because of the conviction that, under the facts disclosed by the record, the capture in question was not the result of the conjoint action of the army and navy, but of the action alone of the navy. It is sufficient to say that this court regarded the statement by the arbitrators that the capture was not the joint act of the army and navy as binding upon it, and what appears in the opinion about other points has no bearing upon the present case.

Another case referred to by counsel is *Porter* v. *United States*, 106 U. S. 607, 611. But the decision there did not go beyond the point that the act of June 30, 1864, 13 Stat. 306, 311, c. 174, did not allow bounty where the vessels of the enemy, during the late rebellion, were destroyed by the combined action of the land and naval forces of the United States. The court said: "Prize-money, or bounty in lieu of it, is not allowed by the laws of Congress where vessels of the enemy are captured or destroyed by the navy with the coöperation of the army. To win either, the navy must achieve its success without the direct aid of the army, by maritime force only. No pecuniary reward is conferred for anything taken or destroyed by the navy when it acts in conjunction with the army in the capture of a fortified position of the enemy, though the meritorious services and gallant conduct of its officers and men may justly entitle them to honorable mention in the history of the country."

Nor has *The Selma*, 1 Lowell, 30, 34, any bearing upon the present discussion. That case arose out of certain captures made in the action of August 5, 1864, in the bay of Mobile. It was there decided—and nothing else was decided—that in order to entitle a vessel to participate in the distribution of a

prize, its situation during the naval engagement must have been such that it could have rendered assistance in the actual conflict in which the prize was taken. The court said: "Suppose it had happened in the case now before me, as once occurred on the Mississippi under the same great captain, that only a small number of vessels had made good the passage of the forts; and that they had found themselves only equal or inferior in force to the enemy within, and had then succeeded by their skill and gallantry in making this capture. It would be impossible, I think, under the case of *The Atlanta*, or on principle, to hold that the vessels outside were actual takers, and to reduce the credit and reward of the conquerors to the level of a capture by superior force. And it will not be easy under our law to define actual captors in such a way as not to require of them at least the qualifications of position and power to do service which the statute peremptorily imposes on constructive takers."

We have referred quite fully to these cases because they were made the subject of comment by counsel. But we do not think that any of them meet the precise question now presented. They throw no light on the inquiry whether, in estimating the force of the enemy's vessel, the support furnished by land batteries, mines and torpedoes is to be taken into consideration.

The words in the existing statute relating to the distribution of prize-money are not entirely new. In the act of March 2, 1799, 1 Stat. 709, 715, c. 24, § 5, relating to the navy of the United States, it was provided: "That all captured national ships or vessels of war shall be the property of the United States—all other ships or vessels, being of superior force to the vessel making the capture, in men or in guns, shall be the sole property of the captors—and all ships or vessels of inferior force shall be divided equally between the United States and the officers and men of the vessel making the capture."

In an act of April 23, 1800, 2 Stat. 45, 53, c. 33, § 7, for the better government of the navy, it was provided: "That a bounty shall be paid by the United States of twenty dollars for each person on board any ship of an enemy at the commencement of an engagement, which shall be sunk or destroyed by

any ship or vessel belonging to the United States of equal or inferior force, the same to be divided among the officers and crew in the same manner as prize-money."

The fourth section of the act for the better government of the navy, approved July 17, 1862, 12 Stat. 600, 606, c. 204, § 4, contained this provision: "That a bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement which shall be sunk or otherwise destroyed in such engagement, by any ship or vessel belonging to the United States, or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars, if the enemy's vessel was of inferior force; and of two hundred dollars, if of equal or superior force; to be divided among the officers and crew in the same manner as prize-money; and when the actual number of men on board any such vessel cannot be satisfactorily ascertained, it shall be estimated according to the complement allowed to vessels of their class in the navy of the United States; and there shall be paid as bounty to the captors of any vessel of war captured from an enemy, which they may be instructed to destroy, or which shall be immediately destroyed for the public interest, but not in consequence of injuries received in action, fifty dollars for every person who shall be on board at the time of such capture."

Then came the act of June 30, 1864, 13 Stat. 306, 310, c. 174, § 11, regulating prize proceedings and the distribution of prize-money. The eleventh section of that act is substantially the same as the fourth section of the act of 1862, and is reproduced in § 4635 of the Revised Statutes on which the claimant bases his action against the United States.

It thus appears that Congress, in providing for bounty to be paid by the United States on account of enemy vessels sunk or otherwise destroyed by any ship or vessel belonging to the United States, has never prescribed any other rule than to give the smaller amount when the enemy's *vessel* was of inferior force, and the larger amount when the enemy's *vessel* was of equal or superior force. We are asked to construe the words in the present statute "one hundred dollars, if the enemy's

vessel is of inferior force, and two hundred dollars if of equal or superior force," to mean just what it would mean if the question of the inferiority or superiority of the enemy's vessel was made, by express words, to depend upon the inquiry whether it was or was not supported in the naval engagement by land batteries, mines and torpedoes under the charge of others than those having the management of the enemy's vessel. We cannot do that without going far beyond the obvious import of the words employed by Congress. Of course, our duty is to give effect to the will of Congress touching this matter. But we must ascertain that will from the words Congress has chosen to employ, interpreting such words according to their ordinary meaning as well as in the light of all the circumstances that may fairly be regarded as having been within the knowledge of the legislative branch of the Government at the time it acted on the subject. There is undoubtedly force in the suggestion that in rewarding officers and sailors who have sunk or destroyed the enemy's vessels in a naval engagement it is not unreasonable that all the difficulties, of every kind, with which they were actually confronted when engaging the enemy should be taken into consideration. But that was a matter which we cannot suppose was overlooked by Congress; and we are not at liberty to hold that it proceeded upon the broad basis suggested, when it expressly declared that the amount of its bounty shall depend upon the question whether "the enemy's *vessel*" —not the enemy's vessel *and* the land batteries, mines and torpedoes, by which it was supported—was of inferior or of equal or superior force.

In our examination of this case we have not forgotten the skill and heroism displayed by the distinguished commander of our fleet in the battle of Manila, as well as by the officers and sailors acting under his orders. All genuine Americans recall with delight and pride the marvelous achievements of our navy in that memorable engagement. But this court cannot permit considerations of that character to control its determination of a judicial question or induce it to depart from the established rules for the interpretation of statutes. Nor can we allow our judgment to be influenced by the circumstance that Congress

has recently repealed all statutes giving bounty to officers and soldiers of the navy for the sinking or destruction hereafter, in time of war, of an enemy's vessels—thereby, it may be assumed, indicating that in the judgment of the legislative branch of the Government the policy of giving bounties to the navy was not founded in wisdom and should be abandoned. This court has nothing to do with questions of mere policy that may be supposed to underlie the action of Congress. What is termed the policy of the Government in reference to any particular subject of legislation, this court has said, "is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a ground much too unstable upon which to rest the judgment of the court in the interpretation of statutes." *Hadden* v. *The Collector*, 5 Wall. 107, 111. Our province is to declare what the law is, and not, under the guise of interpretation or under the influence of what may be surmised to be the policy of the Government, so to depart from sound rules of construction as in effect to adjudge that to be law which Congress has not enacted as such. Here, the language used by Congress is unambiguous. It is so clear that the mind at once recognizes the intent of Congress. Interpreted according to the natural import of the words used, the statute involves no absurdity or contradiction, and there is consequently no room for construction. Our duty is to give effect to the will of Congress, as thus plainly expressed. *United States* v. *Fisher*, 2 Cranch, 358, 399; *Lake County* v. *Rollins*, 130 U. S. 662, 670.

In our opinion, the Court of Claims did not err in holding that in determining whether the Spanish vessels sunk or destroyed at Manila were of inferior or superior force to the American vessels engaged in that battle, the land batteries, mines and torpedoes not controlled by those in charge of the Spanish vessels but which supported those vessels, were to be excluded altogether from consideration, and that the size and armaments of the vessels sunk or destroyed, together with the number of men upon them, were alone to be regarded in determining the amount of the bounty to be awarded. In that view the decree below was right, and it is

Affirmed.

FULLER, C. J., WHITE and MCKENNA, JJ., dissenting.

MR. CHIEF JUSTICE FULLER, with whom concurred MR. JUSTICE WHITE and MR. JUSTICE MCKENNA, dissenting.

Claimant in prosecuting this case, in effect, represents the claims of all the officers and men engaged in the battle of Manila Bay, May 1, 1898. The question is not whether there was a grant of bounty, for that is not disputed. It is simply as to the amount of bounty, and the correct result turns upon the construction of the statute. There being no controversy in respect of the existence of the grant, I am of opinion that the rule of strict construction does not apply, and that the statute, in view of its object, should be construed liberally in favor of the beneficiaries. If so construed, the judgment ought to be reversed.

The applicable statutory provision is as follows:

"A bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement, which is sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States, or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars, if the enemy's vessel was of inferior force, and of two hundred dollars, if of equal or superior force, to be divided among the officers and crew in the same manner as prize money; . . ."

The obvious object of the law was to encourage personal gallantry and enterprise. If the hostile force was equal or superior then the bounty was to be double what it would be if the enemy's force was inferior, because the hazards to be run were so much the greater. But the bounty was limited in total amount by the number of persons on board the vessels of the enemy, which appears to have been considered to be a practicable restriction.

The chief distinction, as a military achievement, of the victory of Manila Bay, is that the American fleet, unaided by an army, attacked a force composed of ships supported by powerful shore defences, together with submarine mines and torpedoes; and, in defiance of these open and hidden dangers, in ad-

dition to the power of the enemy's fleet, sailed in, and not only destroyed or captured all the opposing vessels, but captured or silenced the shore batteries. To omit consideration of these circumstances in determining pecuniary reward under the statute seems to me to be altogether unreasonable, and yet it is held that in comparing the opposing forces, the shore batteries and submarine mines and torpedoes, which our fleet was compelled to encounter, should not be taken into account, though the bounty could not rise above the number of persons on the enemy's ships.

It is my judgment that the intent plainly was that the entire opposing forces should be compared, and that the shore batteries, mines and torpedoes, protecting and defending the vessels of the enemy, should be included in estimating the rate of bounty, although they were, of course, not armaments or means of attack or defence, directly located on the enemy vessels themselves. Indeed, the words of the statute, if literally construed, might be limited to engagements of single vessels on each side, yet as to this the principal opinion correctly applies a liberal construction, and any other would be preposterous. But if a liberal construction be proper at all, why not altogether?

The action of the Government in respect of the taking of vessels by Admiral Farragut in the capture of New Orleans, has great significance. That case involved an award made by a distinguished board of arbitrators, Henry W. Paine, of Massachusetts; Thomas J. Durant, of the District of Columbia, and Gustavus V. Fox, then late Assistant Secretary of the Navy, one of whose findings was: "That in the engagement which resulted in the capture of those ships, the entire force of the enemy was superior to the force of the United States ships and vessels so engaged." This finding was conceded to have included the forts and batteries on shore, but that was not definitely stated. The executive department acquiesced in the award of the arbitrators on this branch of the case without demanding a more specific finding, and this court was not called upon to determine the precise question. 22 Wall. 406.

The Siren, 13 Wall. 389, is not to the contrary, inasmuch as that was a case of joint capture by the army and navy, and

Congress had made no grant in such circumstances. Here the victory was that of the navy alone, and the pecuniary fruits under this statute should not be diminished because the opposing force was partly on shore or under water.

Undoubtedly it is our duty to give effect to the will of Congress, but in ascertaining its will the object Congress manifestly sought to attain must be recognized, and should be controlling, unless positively defeated by the language used.

I am unable to concur in the opinion and judgment of the court, and am authorized to say that MR. JUSTICE WHITE and MR. JUSTICE MCKENNA concur in this dissent.